

New Wheels for Deakin's Chariot: Continuity and Change in Australian Intergovernmental Management

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Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university. To the best of the author's knowledge, it contains no material previously published or written by another person, except where due reference is made in the text.

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Acknowledgments

PhD candidates are frequently reminded that no-one, apart from their supervisors and examiners, is going to be very interested in their dissertation. I was warned that this particularly applies to research on federalism; such research is the academic equivalent of being a smoker in a large organisation, huddling with fellow scholars of federalism on cold and windy corners away from the main building.

So it is with genuine appreciation and recognition that I want to thank my supervisors: my principal supervisor, Professor John Wanna, along with Dr Tracy Fenwick and Dr Amanda Smullen. Their enthusiasm for, and interest in my research, and in federalism more generally, has been a constant and reliable source of encouragement and inspiration. The challenging and insightful questions and advice they provided were critical at every stage by which this dissertation emerged from its initial rough-hewn block of aspirations, enthusiasms and clashing ideas to the finished product.

To my colleagues in the Crawford School of Public Policy, the School of Politics and International Relations, and in the ‘ANZSOG corridor’ where I had the good fortune to be housed in the most beautiful part of the most beautiful campus: thank you for the intellectual stimulation, camaraderie and support you provided on a daily basis throughout my candidature.

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From my parents, Rachel and Jack Unikowski, I inherited much of the inspiration behind this research: the joy of learning for its own sake; a recognition of the significance of ideas and culture; and a keen sense of the importance of a nation’s institutions for the wellbeing and prospects of its people.

Over the course of this work, my children Alexander and Miriana grew into young adulthood.

Their unflagging, cheerful assumption that this dissertation would see the light of day got me through much of the travail that such long term projects inevitably involve.

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Abstract

The Commonwealth government's domination of federal structures, systems and processes raises questions about the federal system's capacity to respond to Australia's immediate and long-term policy issues. This research is predicated on the proposition that the effectiveness of federal structures and processes depends on the capacity of officials to find ways around political constraints and deliver outcomes despite the constraints imposed by political, jurisdictional and organisational interests.

However, we know little about how the bureaucracy manages the balance between the continuity necessary for systemic stability while building a capacity for change. Accordingly, this research addresses the question of how the practice of intergovernmental management by Commonwealth and state government officials affects continuity and change in the Australian federal system.

The conceptual framework for the research is provided by federal dynamics theory, which contributes a new perspective to the study of intergovernmental management by focusing on the way federal structures and ideas combine and interact to inform the strategies adopted by intergovernmental managers.

The empirical data is derived from a series of elite interviews across Commonwealth and state central and line departments and agencies. The interview data reveals how intergovernmental management is practised in the federation's formal and informal settings and processes.

The data shows that, in their pursuit of systemic change and resilience, officials consciously balance their ministers' and jurisdictions' specific positions and interests with a depoliticised commitment to making the system work *despite* the politics. The data shows how these separate perspectives jointly inform their work in committees, working groups and networks. For example, officials responded to the abolition of a number of ministerial councils in 2013 by developing informal networks that contributed to systemic change and resilience in the relevant policy areas.

The thesis argues that the strategies and motivation that go into such network building, and the other tasks of intergovernmental management detailed in the findings, suggest a new set of ideational factors is needed to understand the bureaucracy's role. Accordingly, the research contributes the concept of 'practice modes' to the study of federal dynamics, to explain the link

between federalism's institutional and ideational layers. These are characteristic and contextually set ways in which officials work with colleagues in their own and other jurisdictions, drawing on formal and informal structures and processes to produce ideas and values that legitimate and frame their approach. Officials apply these values and ideas to particular policy issues, using and sometimes pushing back against the political and structural constraints they face. In doing so, intergovernmental managers make an important contribution to the stability and resilience of Australia's federal system, and its capacity for innovation and change.

These findings challenge conventional thinking about intergovernmental management on a number of fronts. First, instead of the tendency to infer the bureaucracy's interests and motives from the constitutional, legal and political structures and processes that constrain them, the research demonstrates that officials play an active role as rule makers, breakers, shapers and keepers. Second, this research challenges the assumption that executive federalism and vertical fiscal imbalance close down the options and opportunities for change available to federal reformers. Finally, the research shows that the demands of complex policy challenges, and the need to apply technical expertise to processes of national harmonisation and coordination, have generated a diversity of views, interests and strategies that caution against simplistic 'central versus line department,' or 'states versus Commonwealth' bifurcations.

Federal dynamics theory generally looks to constitutional frameworks to balance continuity and change. However, this research also shows that a focus on the interaction between actors, institutions and ideas has great relevance for intergovernmental management and its policy functions. The research demonstrates that the role played by the bureaucracy contributes to the federal system's resilience and capacity, through the exercise of personal agency in support of ministerial and jurisdictional policies and interests, on the one hand, and stewardship over the federal system on the other. In this view, the federal bureaucracy is not just a utility for the implementation of decisions but part of the animating spirit of the federation itself.

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List of Abbreviations

AELERT	The Australasian Environmental Law Enforcement and Regulators network, established in 2003 as a professional network for environmental regulators at all levels of government in Australia and New Zealand.
AESOC	Australian Education Senior Officials Committee; supports the Education Council of Commonwealth, state and territory education ministers.
CAF	Council for the Australian Federation; forum for state and territory chief ministers established in 2006.
COAG	Council of Australian Governments; established in 1992, COAG is the peak intergovernmental forum in Australia. The members of COAG are the Prime Minister, state and territory First Ministers and the President of the Australian Local Government Association. The Prime Minister chairs COAG.
CRC	COAG Reform Council; replaced the National Competition Council in 2006 to monitor progress in implementing the National Reform Agenda. Its role was expanded in March 2008, to analyse performance data and assess achievements. The CRC was abolished in July 2014.
HEPA	Heads of EPAs Australia and New Zealand; established in September 2014, HEPA is an informal forum for networking and information exchange by environmental regulation leaders.
IGA FFR	Intergovernmental Agreement on Federal Financial Relations; agreed in December 2008 between the Rudd Government and state and territory governments.
NDIS	The National Disability Insurance Scheme. Trials began in July 2013, with full implementation from July 2016.
PM&C	Department of the Prime Minister and Cabinet.
SOM	Senior Officials Meeting, the working group of Commonwealth, state, and territory central agency heads that supports COAG.
SPPs	Specific purpose payments; the system of tied intergovernmental transfers between the Commonwealth and state and territory governments. The IGA FFR consolidated and simplified previous SPPs, establishing five key service delivery sectors (healthcare, schools, skills and workforce development, disability services and housing).

Chapter 1

Introduction

The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It left them legally free, but financially bound to the chariot wheels of the Central Government.

(Alfred Deakin, letter of 1 April 1902)

It is human beings clothed with office who are the real determiners of what the relations between units of governments will be. Consequently the concept of intergovernmental relations necessarily has to be formulated largely in terms of human relations and human behaviors.

(Anderson, W (1960), *Intergovernmental Relations in Review*, Minneapolis: University of Minnesota Press, p 4)

Writing as the anonymous London correspondent for the *Morning Post*, barely a year after federation, Deakin predicted that the state governments would be unable to agree on matters of policy, nor would they overcome their dependence for revenue on the very customs powers they had ceded to the Commonwealth. As a result, he concluded, ‘Power has departed from them, and they are just discovering the fact...the independence of our States is doomed’ (La Nauze 1952, p. 242).

In view of the Murray-Darling river system’s salience as a policy issue today, it is ironic that one of the areas on which the states could not agree was over the management of water resources. Such contention prompted Deakin’s famous prediction about the ascendancy of the national Commonwealth government which provides the epigraph and title for this dissertation.

Although the Commonwealth’s assumption of control over taxation and a range of state government revenues was yet to come, the degree to which such centralisation has evolved continues to prompt questions and concerns today. ‘The current balance within the Federation—with the Commonwealth involved in seemingly every policy area—is out of kilter’ warned the Federation Green Paper (Department of the Prime Minister and Cabinet 2015, p. 3). The Productivity Commission similarly concluded shortly thereafter that ‘the high level of States’ financial reliance on the Commonwealth has long raised concerns about autonomy and accountability for decisions’ (Productivity Commission 2017, p.2). The ‘steady shift of roles and responsibilities from the states to the Commonwealth...has led to confusion about who is responsible for what, as well as duplication of effort, and substantial increases in the size of the federal bureaucracy’ wrote one ex-state premier (Brumby and Galligan 2015, p.

84); ‘the Federation as it now exists is dysfunctional’ wrote another, describing ‘a one-way slide towards dysfunctionality for the last 75 years’ (Greiner et al. 2014, p. 5).

The Reform of the Federation review, announced by the Abbott Government in 2014, aimed to ‘relaunch the [Australian] federation’ by delivering ‘a more rational system of government’ (Abbott 2014). The review ostensibly responded to a mood for change among the Australian public. The Australian Constitutional Values Survey 2014 reported on the public’s attitudes toward the federal system, with over one third of respondents (36 per cent) feeling that ‘the current system of government, with three main levels, does not work well’, while another 36 per cent felt that the current system, with three main levels, works well but does not deliver legislative diversity, innovation, or collaboration well (Brown 2014, p.5).

By 2016, however, the *White Paper* review process was abandoned, and the prospects for systemic, significant reform of the Australian federal system now appear remote.

Absent such reform, the Commonwealth’s purported domination of federal structures, systems and processes raises questions about the federal system’s capacity to respond to Australia’s immediate and long-term challenges and to deliver tangible outcomes such as those enumerated in Twomey and Withers’ paper for the Council for the Australian Federation (2007). To the extent such centralisation ‘threatens to hollow out the very substance of federalism’ (Braun 2011, p. 36), such questions must also include the impact centralisation has on the quality of Australia’s democracy itself (Hollander & Patapan 2018; Galligan 1995).

At the same time, Galligan noted that the processes for reforming Australian federalism ‘are more varied and complex than is often assumed in essentialist notions of reform discourse that tend to view federalism as a static institutional or conceptual construct’ (2008, p. 619).

Accordingly, my research objective is to understand the nature and sources of change in Australian federalism, and whether change — however incremental — can occur despite systemic centralisation or even because of it.

1.1 Research scope: continuity and change in Australian intergovernmental management

Intergovernmental cooperation, or the lack of it, forms part of the spectacle and theatre of the political dimension of Australian federalism. However, there is also a substantively separate, if interlinked, system in which officials work on the design and implementation of policies and

directions set in the political domain. I will argue that this bureaucratic domain, which I refer to as ‘intergovernmental management’ as distinct from ‘intergovernmental relations’ (I discuss these concepts in more detail in Chapter 2.1.1) warrants study in its own right, as it interacts with and supports or hinders the achievement of objectives and expectations held by politicians and the community.

I have harnessed Deakin’s metaphorical chariot to think about whether, despite our federation’s fiscal rigidities and the slowness of major change, there may be at least some capacity for achieving better outcomes from the practice of intergovernmental management by the officials who work with one another across the jurisdictional divide. While the federation’s ‘chariot’ rolls on with only the occasional deviation on the road to Commonwealth dominance, this dissertation investigates whether there may be more to the system than meets the eye, at least in its potential capabilities.

A focus on the public administration of the federation enables us to look behind the politics of the Australian federation, such as perennial arguments over fiscal federalism and funding inadequacies or the regular spectacle of Council of Australian Governments (COAG) meetings. The administrative structures, processes and cultures of the bureaucracy are separate from the adversarial dynamics in the political domain, and consequently bring a different set of dynamics forward for consideration: practices of cooperation and trust, or their absence; the conduct of difficult and complex negotiations over divergent policies and interests; networks for data gathering and policy analysis and transfer; communities of practice in regulation and harmonisation; and, as a result of the foregoing, long periods in which the hum of work from intergovernmental councils, committees and meetings is only occasionally drowned out by the discordant clatter of spats between federal and state politicians. Understanding this administrative domain is ‘like lifting a veil over the formal constitutional framework and the official narrative of a federation...(to) reveal surprising and under-reported scenarios’ (Poirier & Saunders 2015, p. 495).

Accordingly, my primary research question is:

How does the practice of intergovernmental management affect continuity and change in the Australian federal system?

More generally, to explore this central question, I ask: What do officials do as intergovernmental managers? Why and how do they do it? Under what conditions? With

what results? How does the practice of intergovernmental management respond to and reflect longer term cycles of stability and change in the federal system?

This separation of the bureaucratic from the political dimensions of Australian federalism inevitably raises questions about the relationship between the two, particularly in what ways, and to what extent, the latter constrains the former. Accordingly, my research questions include how the structures, processes and cultures of the federal system both enable and constrain the practice of intergovernmental management; to what extent they do so, and with what effect; and how officials manage and leverage the balance between the continuity necessary for systemic stability and the capacity for change in a federal system.

Such questions involve a focus on how the formal and informal structures and institutions of the federal system affect the ways officials work with one another and such agency as they exercise in doing so, and ultimately how these issues play out in long term trajectories of continuity and change.¹

For all their importance, such questions about the bureaucracy of the Australian federal system are under-researched: the practice of intergovernmental management is poorly understood, and its capacities poorly assessed, including such capacity as bureaucrats themselves perceive and exert to act in and on the system. As a result, the contribution that improving such capacities might make to the operations of the federal system overall are rarely considered. That is the gap to which this thesis intends to make a contribution.

The sporadic nature of previous research also informs the empirical direction taken by this dissertation. The research does not focus on a specific area of policy or a specific component of the policy-making process. Rather, it encompasses a wide range of data from the formal structures underpinning COAG, the processes they embody, and the central, policy and front-line departments and agencies involved in intergovernmental management across a selection of larger and smaller jurisdictions. On the basis of that broader perspective, some general propositions about the research question have been formulated, as a contribution to the development of theory in federal dynamics and public administration and as a framework for more specific, focused research in future.

¹ For the purposes of this research, ‘agency’ refers to the personal capacity and volition of officials. The term ‘organisation’ is used as a generic term for public sector departments and agencies, except where the distinction between them is material.

In terms of the data generated and analysed, the dissertation adopts Lynn's tripartite and very useful concept of public management as comprising three dimensions. The first dimension comprises what Lynn calls 'structures', 'the organization and programmatic and regulatory responsibilities of departments or ministries [and] the requirements of an administrative procedure act or of civil service regulations' (2006, p. 25). This corresponds to the concept of 'rules-in-form' adopted by institutionalism, and the institutional layer of federal dynamics covering the formal structures and processes of the federal system within which intergovernmental management takes place.

Accordingly, the findings in Chapter 4 focus on the intergovernmental forums and the processes that support them, including COAG itself, its ministerial councils and meetings, and the associated processes of deliberation, negotiation and preparation; inter-government agreements; and the departments and agencies in which officials work.

Lynn's second dimension is 'craft', 'the operational and pragmatic concerns of public officials who have managerial responsibilities and are motivated to apply proven, actionable ideas to the problems they face or, alternatively, to fashion solutions appropriate to their specific circumstances' (2006, p. 28). Chapter 5 provides data on what officials understand to be the craft of intergovernmental management, the routines and relationships that take place in and around the system's formal structures.

Lynn's third dimension is the 'institutionalised values' that imbue structures and craft, corresponding closely to the ideational layer in federal dynamics. The sources of these values, corresponding closely with a discursive institutionalist framework, 'include beliefs within the wider society, professional standards, informal norms of practice, ethical precepts, institutional memory, and shared experience' (2006, p. 29). These are explored further in Chapter 6.

In effect, Lynn's three dimensions provide a good account of an 'institution,' in terms of the new institutionalism definition of institutions as 'enduring collections of rules and organized practices' (March & Olsen 2009a, p.3) embedded in structures of processes, resources and meanings.

The limitations of this approach and the possibilities for further comparative case studies within this general framework are discussed in the final chapter.

1.2 Justification for the research

1.2.1 Why study Australia's federal system?

The context for my research is set by two important, inter-related narratives that emerged in the lead up to Australia's federation and continue to characterise the federal culture today.

Starting with the settlement that federation effected between free traders and protectionists, the first narrative highlights the importance of compromise and negotiated pathways for achieving national outcomes. The strategies and rules by which officials from different levels and jurisdictions in the federation engage with one another are shaped by the fact that there is no significant policy area in the national or sub-national polity that does not require the involvement of both the Commonwealth and state governments. As Sharman wrote some twenty-five years ago, there is

... such a degree of interpenetration that it is hard to find either an area of Commonwealth activity that does not impinge on State policies, or State administration that does not entail some Commonwealth involvement (Sharman 1991, p.23)

As an illustration of this concurrency, the top five areas of state government expenditure, accounting for 66 percent of their total spend, are also the subject of national policies and agreements: schools (20 per cent of total state government expenditure 2017-18); hospitals (18 per cent); police and justice (11 per cent); road and rail transport (10 per cent) and family and child welfare services (9 per cent) (Australian Bureau of Statistics, 2018). Even defence policies have an impact on state and, for that matter, local governments, as seen in recent moves to remediate contaminated Department of Defence sites.²

Australians have consistently and clearly expressed an expectation that federal and state governments will work together on key issues and policies. Federalism offers both a way to achieve national objectives and the opportunity for democratic participation at the state level, and 'the average Australian treasures both', Galligan wrote in 1989 (p. 62). This still appears

² A comparative analysis of the use of intergovernmental agreements across six western, developed federations from 1945 to 2008 concluded that Australia had the second highest percentage of overlapping jurisdictions, with both governments operating in 70 percent of enumerated areas; only Germany's 75 percent overlap was higher (Parker 2015, p. 49). Indeed, Galligan (1995) criticises what he calls the 'misconceived' coordinate model of Australian federalism compared with the basic principle of 'concurrency' that, he argues, better reflects its constitutional design. On the normative front, Elazar argues it is precisely these overlapping institutions and functions 'that gives federal systems strength and stability above and beyond many others' (1987, pp. 30), while Gerken enumerates a number of constitutional scholars who have 'convincingly established the policymaking benefits associated with redundancy, administrative overlap, joint regulation, and mutual dependence' (2014, p. 1902).

to be the case thirty years later. Despite the states' important but residual powers and relevant expertise, 80 percent of respondents to the Constitutional Values Survey wanted the federal government involved in the provision of health care, 59 percent wanted the federal government involved in schools, and 56 percent still wanted at least some federal government involvement in the provision of roads and highways. Conversely, in the area of environmental protection, where the Commonwealth's powers *vis-à-vis* the states have most clearly expanded and been reinforced judicially, a sizeable proportion (46 percent) still want state governments to maintain their involvement (Brown 2014, p. 12).³

The second narrative that supports this concurrency is the utilitarian, pragmatic set of outcomes that were expected from federation at that time and continue to form Australians' expectations of the system today. A key characteristic of Australia's 'pragmatic federalism' is that 'political debates seem largely unaware or unwilling to engage with, or shape federalism in terms that comprehend, on any level, ... more abstract principles' (Hollander & Patapan 2007, p. 282).⁴ Consequently, the principles and practices of the federal system tend to come to the fore only at times of stress and strain; and, as a result, such discussions are shaped by the terms of the issues generating those pressures, as exemplified by a focus on the distribution of GST revenue current at the time of writing.

These narratives jointly inform the practicalities of federal administration. National reforms and responses to domestic and international challenges require pragmatic and flexible cooperation between all governments. As Galligan pointed out, this necessitates

an adequate system of intergovernmental arrangements and procedures for coordinating policy action when that is required for achieving agreement on national standards (Galligan 1995, p. 201).

Whether such outcomes are achieved, and the balance between positive and negative effects and outcomes in any policy endeavour, depends to a significant extent on the federal system's structures, operations, systems and culture. In essence, these involve two conflicting sets of institutional forces and rationales. The first set, embedded in the formal structures and

³In Canada's case, Simeon argues similarly that, despite the rejection of the Meech Lake and Charlottetown referenda which might have generated public demand for big changes in intergovernmental relations, 'surveys suggest citizens want governments to cooperate and get along with each other' (2006, p. 321).

⁴ This notion of 'pragmatic federalism' reflects Parker's contention almost 60 years earlier that the Australian approach to federalism has little to do with any 'preoccupation with or conviction about the constitutional and political principles of federal government' (cited in Cole 2014, p. 30). Collins similarly noted that Australian federalism 'is a product of convenience rather than conviction' with appeals to states' rights typically understood as 'claims to particular shares of the federal pie rather than as articulations of normative principle' (1985, p. 153).

processes of the federation, its councils and in the agreements and policy processes they manage, is dominated by the political interests of governments. The second is located in cross-jurisdictional intergovernmental networks and arenas of policy development and negotiation (Painter 2001, p. 139-140).

As Painter argued, however, these two sub-systems have implications for how those engaged in intergovernmental management work within them. The former involves strongly hierarchical relationships, while the non-hierarchical networks beneath them are characterised by ‘power sharing and interdependence, where cooperation rather than command is the underlying organising logic of effective policy making’. These are precisely the dynamics I want to explore further here, including understanding why, how and when the same actors work from one or the other set of styles or strategies.

Thus, for example, Galligan et al. suggested, but did not explore, “a three-dimensional framework that included a second separate tier of administrative management that did not correspond exactly with... Commonwealth-state politicisation” (Galligan et al. 1991, p. 16).

My research follows that up by considering, from the viewpoint of its practitioners, what successful intergovernmental management consists of, as a process for recognising, accommodating and reconciling differences in policy priorities and directions, and hence making a distinct contribution to the quality of policy design and implementation overall (Galligan et al. 1991, p. 17).⁵

The proposition that improved processes may be part of the answer to the question of whether the federal system is ‘fit for purpose’ brings me to the next part of my justification for this research, which looks at the role of the bureaucracy in a federal system.

1.2.2 Why study the role of the bureaucracy in intergovernmental relations?

This dissertation builds on Galligan’s research that contends that the ‘arena of intergovernmental relations and management is the most promising one for contemporary reforms’ (2008, p. 68).⁶ Yet we have accomplished little in such reforms since that was written,

⁵ My emphasis on the policy outputs of the federal system should not obscure the implications of federalism for democratic participation, a matter taken up by Galligan (1995) and, more recently, by Hollander and Patapan (2018) who focus on federalism’s potential capacity to enhance human rights.

⁶ This conceptual territory is also traversed by Painter (1998a); Productivity Commission (2006); Botterill (2007); Menzies (2013). Arklay et al. (2017) report on some interesting work on practitioners’ views on how to improve collaboration between governments.

and arguably, with the abolition of the COAG Reform Council, we have even gone backwards.⁷

Moreover, as I show in more detail in Chapter 2, there is only limited research relating to intergovernmental management in Australia; with only 12 studies in four decades, intergovernmental management has not been studied systematically, in terms of an epistemologically distinct, coherent, reflexive and additive body of research attracting sustained attention over time. Indeed, this lack of attention to the structures, processes and cultures of intergovernmental management contributes to the miasma of ‘ignorance and defeatism’ that forced a leading constitutional lawyer to cancel plans for ‘a public forum to examine ongoing questions about the performance of the federation, and areas for reform’ noting that ‘this is the first time I have encountered this problem’ (Williams 2013, p. 3).

As described in detail in section 2.2.2, only a handful of studies of Australian federalism over the past four decades has focused on intergovernmental management. Such a gap does not, in itself, constitute a justification for further study. Such sporadic attention, both here and overseas, may suggest only that such study is unlikely to contribute new and important information or ways of thinking about federalism.

In response to this challenge, I posit four reasons for studying the bureaucracy of the federal system as a separate and distinct domain. I will return to these objectives as the basis for my considerations of the implications of this research in Chapter 7.

First, it is by no means a given that the potential benefits and advantages of federalism outlined above will necessarily accrue in the absence of effective, efficient and durable means for their achievement. One of the most important of these may be characterised as ‘intergovernmental policy capacity’, a term coined and defined by Inwood et al. in primarily utilitarian terms as aiming to fulfil existing intergovernmental policy agreements and to develop new policies in policy areas where jurisdiction and resources are shared between levels of government (Inwood et al. 2011, p. 4).

As an example of such ‘capacity’, we need to be able to assess how and to what extent the

⁷ Thus, for example, Brumby and Galligan have noted that ‘Australia’s concurrent federal system is strong on concurrency but weak on inter-governmental relations and management. Although these latter two are inevitable and ongoing, they are poorly articulated and rarely addressed (Brumby & Galligan, 2015, p. 91; see also Galligan, 2008; 1995). Similarly, Clarke noted that a lack of ‘systematic evaluation processes’ and a capacity to track successes and failures in implementation have undermined the American ‘laboratories of federalism’ framework (2007, p. 76).

federal system's bureaucratic dimension can be expected to address the costs of federalism's inherent problems of coordination, negative externalities, fragmentation and short-termism. There is evidence to suggest that, while a majority of citizens value federalism as a national framework for governance, they also see substantial room for improvement in the way in which this framework operates (Brown et al. 2006, p. 299; similar dissatisfaction is reported in Gray & Brown 2007, p. 42). While 93 per cent of respondents to the Constitutional Values Survey agreed that it was desirable for different levels of government to collaborate on solutions to problems, only 41 per cent agreed it was being done quite well, or very well (Brown 2014, p. 9).⁸ A significant part of the answer to this challenge lies in the nature and quality of the relationships between officials.

While the public's perceptions of inefficiency and ineffectiveness may, to some extent, be a response to the politics of intergovernmental relations portrayed in the media, such perceptions prompt a subsidiary research question: to the extent that officials need capacity and agency to address such problems and make intergovernmental collaboration successful, under what conditions are they able to deliver, and to what extent do such conditions obtain in the system today? Thus, for example, Chappell and Curtin's conclusion that federalism can provide a venue for learning and innovation is predicated on the effectiveness of 'intergovernmental machinery', such as policy coordination and fiscal institutions and formal and informal meetings of political and policy officials (Chappell & Curtin 2012, p. 27).

Second, policy capacity contributes to the overall nature and capabilities of the federal system itself, not just its individual outputs. Officials don't just work *in* the system, they work *on* it and *through* it. Officials are not passive or objective bystanders in the policy process (Smith & Brown 2017, p. 22); rather, although their work is largely unacknowledged and even less studied, they play a significant role in determining what is on the federal agenda or off it, what happens once decisions have been made, and how the totality of those decisions contributes to the health of the system overall. As Soss and Moynihan put it, 'bureaucracies are not only creatures but also creators of the political forces that impinge on them' (2014, p. 320). As an illustration of the bureaucracy's importance for the outcome of policy implementation, the Productivity Commission's recent five-year productivity review commented that 'the commitment of individuals at both ministerial and bureaucratic level was crucial to the

⁸ Schneider et al. (2011, p. 6) report findings from the United States on a widespread preference for all levels of government to take on a more active role, but with a clear preference for different levels of government to take the lead in particular policy areas.

implementation and success of reform efforts’ (Productivity Commission 2017, p. 17).

A third and related reason goes to the question of accountability. My contention is that greater scrutiny and understanding of the bureaucratic operations underpinning federalism will enhance their accountability and systemic governance overall.

In the face of what they saw as a weakened institutional capacity for intergovernmental monitoring and analysis in the United States, Conlan and Posner argued that ‘the capacity of our policymaking institutions to oversee the performance of the system and to take concerted action to strengthen that system has become a defining issue for effective governance in the twenty-first century’ (Conlan & Posner 2008, p. 5).⁹

State government administrators in Australia, as they do in other federal systems, have a wide latitude to make vital decisions in important public programs. And yet, ‘surprisingly little is known about this process’ (Schneider et al. 1997, p.240). The latter study described a process of bureaucratic decisions, from those that were easily adopted and applied to larger groups to those more difficult to implement and only benefiting special groups. Just as understanding this scaling process has possible application to a wider range of bureaucratic decisions, we need to avoid turning what intergovernmental management officials do into a ‘black box’ that is similarly undifferentiated. Opening up this black box for scrutiny may give us some insights into how agency may be more effectively applied to a range of policy issues and problems beyond the management of the federal system.

A subset of these questions involves the bureaucracy’s ability to improve the federal system from within, given that any significant, long-term reform program is highly dependent on Commonwealth leadership, runs the risk of being overtaken by short-term Commonwealth-state politics or, in the longer term, being overturned by succeeding governments (Bruerton & Hollander 2017, p. 11; Fenna 2012a, p. 33). As Ken Smith, a former senior state official and the head of the Australia and New Zealand School of Government said recently,

At the political level, reform has ground to a halt. We ... cannot rely on a politically led grand settlement between states and the Commonwealth to reshape our federation, at least not in the short term. We need all levels of government to begin rethinking how we can make our federation

⁹ Their conclusion that ‘nowhere has the decline in federal intergovernmental expertise been more dramatic than in the elimination of the Advisory Commission on Intergovernmental Relations...in 1996’ may be reflected in Australia by the abolition of the COAG Reform Council in 2014 and the transfer of a more limited set of responsibilities to the Productivity Commission

work (2017).

Finally, there is a question of what we might learn from research on intergovernmental management about the constraints on and support for the exercise of agency by public servants more generally. A number of the propositions arising from this research help to illuminate the broader shift from new public management models of public service to emerging paradigms of public administration.

1.3 Outline of the thesis

Chapter 2 provides an overview of the theoretical settings for this research, based on the three domains of federalism, public administration and policy and the issues each raises in relation to the practice of intergovernmental management. The chapter takes a close look at the latter term's meaning; its differentiation from the broader study of intergovernmental relations; and the limited extent to which it has been studied in Australia.

The chapter examines the theory of federal dynamics as the framework for this research, exploring the implications of federalism's structural and ideational components for how the bureaucracy contributes to stability and change in Australian federalism.

Chapter 3 sets out the methodology I have employed to gather and analyse the empirical data for the thesis. The chapter discusses the discursive institutionalist framework on which the methodology is based, and provides details on the interviewees and the logic of the interview structure.

Chapters 4 to 6 discuss the main empirical findings of the thesis. Chapter 4 examines the practice of intergovernmental management as it affects and is affected by its formal settings in ministerial councils and working groups, national agreements, public service organisations and relations between the bureaucracy and ministers.

Chapter 5 examines the informal elements of the federal system, examining the conventions and norms of meetings, policy work, network management, and practitioners' views of intergovernmental management as a whole.

Chapter 6 focuses on the federal bureaucracy's cultures and values. The chapter reports interesting and crucial aspects about the way federal structures and practitioners' ideas and values are interrelated and inform their work, with implications for their role as change agents.

Finally, in Chapter 7, I discuss the implications of my research for the practice of intergovernmental management and for the theoretical fields the research has traversed.

1.4 Chapter summary

This chapter has justified research on the bureaucracy of the federal system through its contribution to a broader assessment of the federal system's capacity to deliver against the expectations of Australia's citizens and their governments, both now and into the future, in relation to the array of complex problems and issues we face.

It has foreshadowed the discussion in the next chapter of the potential role of the bureaucracy in delivering a better federal system, or at least potentially having the capacity to do so, based on four normative propositions: first, we need to understand the dynamics of the interpersonal relations that characterise intergovernmental management; second, we need to ask to in what ways the bureaucracy can address the inherent problems of a federal system; third, because if public servants play a significant role in the system, understanding what they do and why goes to the question of accountability to governments and the public; and fourth, because this research points to wider questions about agency, capacity and role, at a time when these are major questions for the future of public services generally.

As I suggest in the final chapter, it may well be through opportunities that emerge in this bureaucratic domain, away from the vagaries, pressures and glare of the political domain, that we will find and fit 'new wheels' to the federation for the future.

Chapter 2

Gardeners or engineers? A theoretical survey of federal dynamics and intergovernmental management

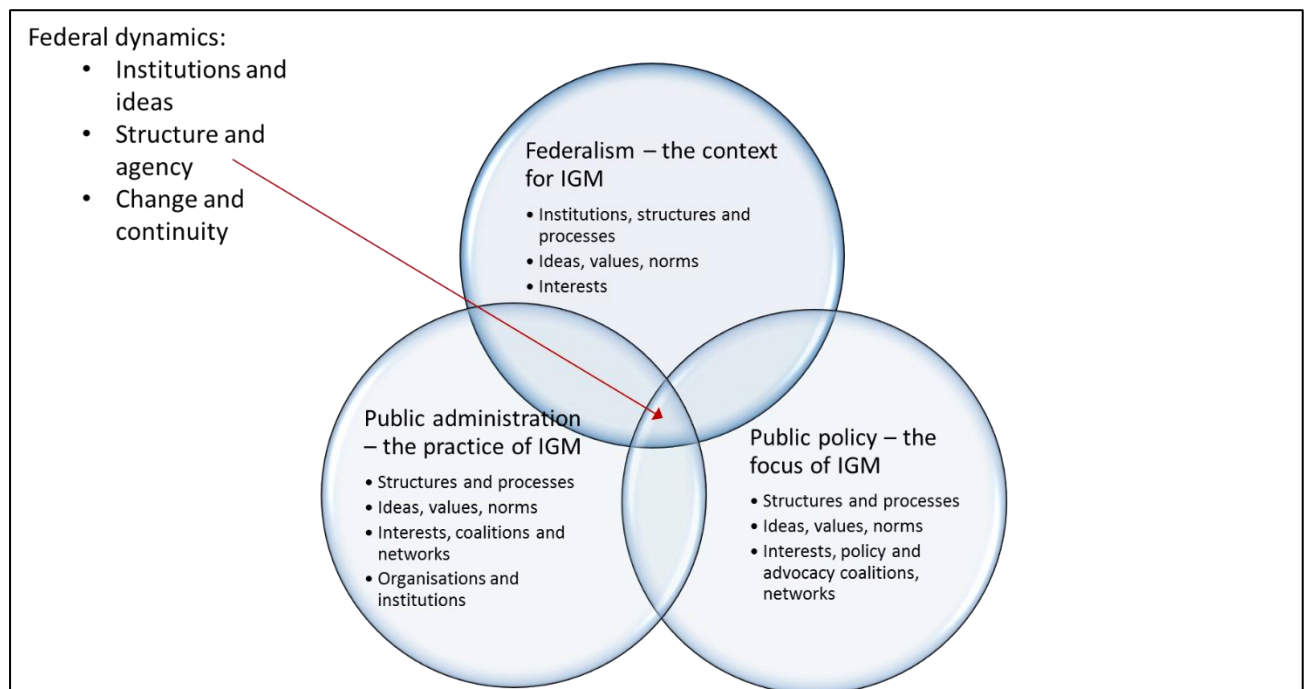
2.1 Introduction

The purpose of this chapter is to provide a conceptual framework for the empirical chapters to follow, by linking three densely populated precincts of political science and the issues they focus on:

- (i) ‘public administration’ as a general field for the study of the bureaucracy;
- (ii) the policy design and implementation tasks bureaucracies carry out; and
- (iii) the context of federalism in which and for which those tasks are performed.

Each of these is a huge theoretical domain in its own right. As summarised in **Figure 1**, this research explores the interfaces between these domains, and their differing but related perspectives on intergovernmental management.

Figure 1: Theoretical domains: federal dynamics at the intersection of federalism, public administration and policy



Source: adapted from Inwood et al. 2011, p.6

The outcomes from the study of such ‘identifiable spheres of theoretical and empirical overlap’ include: extending research in any one field beyond its typical scope; clarifying ‘theoretical black boxes’; and identifying hitherto undervalued causal factors (Weible and Carter 2017, p. 23). Taking the notion of overlap a step further, I add one more outcome. The three domains depicted in **Figure 1** are not only sites of ‘theoretical and empirical’ enquiry: each of them constitutes a context for bureaucratic practice, in which historical, long-term cultures (such as ‘pragmatic federalism’ and ‘Westminster conventions’ of public service) inform and circumscribe issues and interests in a particular policy field to produce specific processes and tasks conducted by public servants. Accordingly, there are practical outcomes for intergovernmental management from studying the interaction between these domains, such as assessing administrative capabilities and identifying new possibilities for governance and process. I will explore these outcomes further in Chapter 7.

As depicted in **Figure 1**, the three ‘spheres’ suggest a microscope with three lenses trained on what Inwood and his colleagues call Canada’s ‘intergovernmental capacity’ for developing and implementing policy (2011).

In my research, however, the centre of the three rings is constituted by the theoretical and empirical research question of how the practice of intergovernmental management (the theoretical field of ‘public administration’) as it is applied in particular policy processes (the ‘policy’ field) affects continuity and change in the federal system (the ‘federalism’ field). This chapter reviews each of these domains and the questions they raise for this research.

I begin with a discussion of intergovernmental management as a distinct bureaucratic practice and the extent to which it has been studied in Australia. I then briefly consider congruent theoretical insights on institutional resilience, policy entrepreneurship and questions of structure and agency.

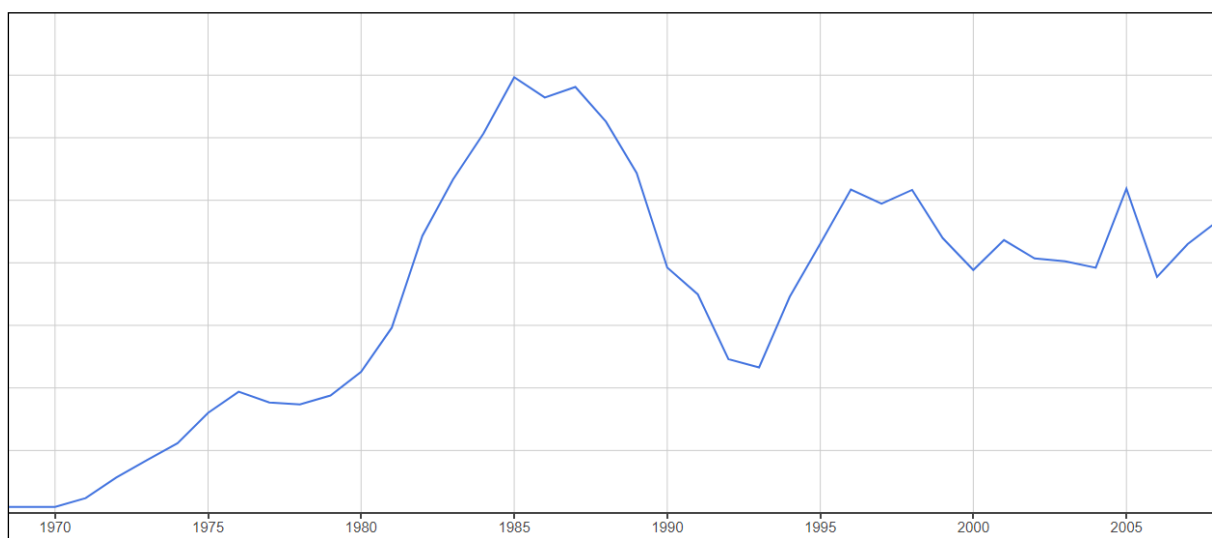
Finally, this chapter provides the basis for my research methodology, which is discussed in detail in Chapter 3.

2.1 Intergovernmental management: the hidden dimension of Australian federalism

Although the term ‘intergovernmental relations’ emerges as a substantial topic of public administration literature in the mid-1930s, it was not for another 40 years that the term

‘intergovernmental management’ appeared in response to the requirements of administering new and complex governmental programs in the 1970s (Box 1995, p. 24; Wright & Krane 1998, p. 1162). Thereafter it only occupied a tiny niche by comparison with the earlier term’s usage,¹⁰ even though, as Poirier and Saunders show in their comparative survey of 20 federations, effective public administration is a key instrument in successful intergovernmental relations (Poirier & Saunders 2015, p. 462). By way of illustration, a survey of the term’s usage in monographs depicted in **Figure 2** shows its rapid emergence over the 1970s and through to the mid-80s, after which usage appears to plateau.

Figure 2: Use of the term ‘intergovernmental management’ in monographs 1970-2008¹¹



Source: Jean-Baptiste et al. (2011)

As late as 1990, intergovernmental management as an object of study in its own right was still described as ‘embryonic’ and ‘shallow’, having ‘recently emerged in the literature’ (Marando & Florestano 1990, p. 287; Yeatman 1991, p. 41); while almost a decade later, Wright and Krane describe it as:

an important "hidden dimension" of interjurisdictional and interorganizational activity that is extensive, significant, and largely unrecognized within public administration/management literature and practice(s) (Wright & Krane 1998, p. 1165).

A further decade on, intergovernmental management had all but disappeared as a focus for

¹⁰ Leach notes that the need to consult with the administrators of federal programs was first recognised in 1955, when the Committee on Government Operations of the U.S. House of Representatives submitted a questionnaire to state and local officials to elicit information on the operation of grant-in-aid programs (1976, p.3).

¹¹ I have not included a scale for the y-axis, as the actual percentages of all the books published over this period are, of course, infinitesimally small; the point is merely to underline the general emergence and plateau in the term’s usage.

better practice in US public administration, as a result of the abolition or marginalisation of federal offices and agencies established to help improve and rationalise intergovernmental management and the system of intergovernmental subcommittees (Conlan & Posner 2008, p. 4). Similarly, Inwood et al. note that intergovernmental decision-making is ‘relatively understudied’ in the Canadian system (Inwood et al. 2011, p. 7).

As for Australia, little has changed over the quarter of a century since Yeatman expressed concern over the lack of a focus on intergovernmental management, particularly in program evaluation. She noted that, for all the emphasis placed at the time on program evaluation, there was a corresponding lack of focus on evaluating ways of improving the collaborative aspects of intergovernmental management, which she attributed to the preoccupation of coordinate views of federalism with the division of jurisdictional roles (Yeatman 1991: 43).

The distinction between intergovernmental relations generally and intergovernmental management is significant for my research in four ways.

First, Anderson argues that ‘It is human beings clothed with office who are the real determiners of what the relations between units of governments will be. Consequently the concept of intergovernmental relations necessarily has to be formulated largely in terms of human relations and human behaviors’ (1960, p. 4). Although this definition is now almost 60 years old, its emphasis on actors’ relations and behaviours, rather than formal structures and processes, and its focus on the dynamics and dialectical relations between the formal and informal aspects of the federal system, as central to my approach to the research questions.

Second, the lack of research on intergovernmental management detailed below means we know little about how decisions are being made in this context. Bureaucrats play an important role in governance, policy design and its implementation, service delivery, regulatory frameworks and their application and the provision of competitive settings for labour and capital and so on. Accordingly, ‘what intergovernmental actors see and how they respond within the framework of their perceptions about the organizational world are an important dimension of intergovernmental reality’ (Cho & Wright, 2004, p.451). Numerous studies of Australian federalism have criticised what Kildea and Lynch call ‘the democratic deficit’ that results from the lack of transparency with which agreements are made between executive governments at the Council of Australian Governments (COAG) and the risk that legislatures may be sidelined

Third, even if there been a more sustained research tradition in this area, there is no guarantee that analyses, frameworks and conclusions of the past continue to be fit for purpose, given the changes that have taken place and that we would expect to take place in any federal system and in public administration since the term was first distinguished. Indeed, as argued in the review of the literature on Australian intergovernmental management below, standard elements of these past analyses are debatable in the current context.

Finally, the role of beliefs, values and norms in shaping practitioner behaviours foreshadows the discussion in the next chapter of a discursive institutionalist methodology.

2.1.1 Defining ‘intergovernmental management’

An initial ontological query might be whether, and to what extent, the federal bureaucracy operates as a distinct element in the federal system, or whether it represents no more than a series of ‘incremental adjustments in managerial activities that enhance effective service delivery’ (Wright & Krane 1998, p. 1162).

If the best solution to the problem of concept formation is to rely upon norms of established usage (Gerring 1999, p. 362), we have a problem in defining intergovernmental management. Even where intergovernmental management has been studied more consistently, it is by its nature protean and hence has neither a fixed nor a consensual definition. As Agranoff found, IGM is ‘considerably more involved than earlier studies suggested’, involving ‘deeply complicated governmental processes’ (2007, p. 282).

Despite the lack of a strong research tradition on which to base my research, I nevertheless propose five characteristics to differentiate intergovernmental management from its settings in intergovernmental relations.

First, the approach is primarily utilitarian, adopting Agranoff and Lindsay’s definition of intergovernmental management as a process by which cooperating officials ‘develop a solution to the problem at hand while recognizing the importance of the substantive, jurisdictional and political issues’ (Agranoff & Lindsay 1983, p. 228; Marando & Florestano 1990, p. 288).

Second, the ‘problem at hand’ is one that by definition involves both federal and state

¹² But see Menzies for a more balanced view. She concludes that ‘executive federalism has served Australia well, particularly since the mid-1990s’ and that these criticisms understate the accountabilities that do exist (2012a, pp. 1-2).

governments (and occasionally local governments) in a mix of policy tasks and responsibilities, including identifying and prioritising the policy goals themselves in process of influencing, bargaining and persuading (Haas 1992, p. 2). Accordingly, I argue that intergovernmental management encompasses a broader range of tasks than Wright and Krane, who suggest that the chief task of intergovernmental managers is to overcome goal conflicts (1998, p. 1163). As my findings indicate, these tasks encompass the full range of policy functions, from identifying issues and options and preparing agendas for decision to the implementation of national programs, the establishment and maintenance of regulatory regimes and street-level administration, in a multi-jurisdictional context.

Third, continuous, regular personal relations and informal interaction between officials are an integral part of the way such tasks are conducted (Wright 1974, p.2). As I will show in the general findings, the degree to which intergovernmental relations are formalised in processes, structures, agreements and so forth has an important effect on such relations. However, they don't tell the whole story; intergovernmental management is a 'process of solving intergovernmental problems under conditions of high uncertainty and complexity through the creation and use of governmental and nongovernmental networks' (Wright & Krane 1998, p. 1162; Agranoff 2007, p. 271). Elsewhere, Wright has concluded that, at least in the American case, 'the evidence reveals that state administrators are firmly fixed "in the middle" of IGR and their contacts extend in many directions with variable strengths' (Wright 1978, p. 256). (I will explore personal networks in the Australian case in Chapter 5.5.) In the Australian case, Weller suggests there is some value in considering a diplomatic analogy when referring to COAG and the Special Premiers Conferences that preceded it:

interaction is continuous; some level of relations must be maintained, even at those times when political dynamics cause a hiatus in the process; negotiations take place simultaneously across a range of issues; difficulties in one area may have an impact in unrelated policy areas; hence the necessity for honesty and trust (one bad experience may sour the whole process) (1996, p. 103).

Fourth, in performing these tasks officials have to balance and adjudicate between sets of values and interests at the national or systemic level with those that apply at the jurisdictional or organizational levels. Consequently, I depart from Wright and Krane (1998) in their strict delineation of intergovernmental management as an incremental activity that takes 'systems, structures, policies and programs' as a given, while the contextual federal structures, systems and programs are stable and outside the scope of day to day intergovernmental management. As Agranoff points out, IGM requires officials to jointly solve jurisdictional-legal and political

Gardening or engineering? A theoretical survey of federal dynamics and intergovernmental management issues in addition to technical problems associated with their projects (2007, p. 271). As I will show, these wider concerns have a direct bearing on the way intergovernmental management is conducted and the reasons it is conducted that way. While problem solving takes place in a domain that is distinct from the political dimensions of intergovernmental relations, it is the dialectic between the two and the way these matters are included in the policy calculus that has a direct bearing on the exercise of individual agency. Accordingly, Chapters 4 and 5 detail findings regarding the impact of the federal system's formal structures and settings on the roles and approaches of those working on intergovernmental management, and *vice versa*. Chapter 6 examines the values and norms that underpin such practice, and how the ideas that such values give rise to are embodied in bureaucratic practice.

Finally, intergovernmental management represents a particular, distinct set of public administration skills and knowledge. To some extent this varies according to the policy area and the policy instruments employed (McGuire 2013, p. 109), but all forms of intergovernmental management begin with requisite knowledge of the relevant structures, processes and practices before moving on to the actual bargaining, negotiation, management of informal relationships, trust building and ultimately knowledge of when and how to refer back to the political arena. As the analysis of the craft of intergovernmental management detailed in Chapters 4 and 5 indicates, many interviewees commented specifically on the applied skills involved in intergovernmental management. Accordingly, Chapter 5 also considers the characteristics and impact of the bureaucratic dimension of federalism as an institution in its own right.

In summary, intergovernmental management is defined here as *a set of policy-related tasks, processes and choices, carried out or made by officials (as distinct from other participants in the federal process such as politicians) through formal and informal networks to develop and implement approaches to problems that require the joint involvement of federal and state governments.*

2.2 Federalism, public administration and public policy: analytical and theoretical frameworks

2.2.1 Federal dynamics and intergovernmental management

The study of federal dynamics which underpins my research reflects Friedrich's concerns, in his work over the 1950s and 60s, with federalism as 'a process rather than a design', particularly

in the initial stages of federalisation.¹³ Friedrich argued that focusing on any 'particular design or pattern of competencies or jurisdictions' is only a snapshot, 'a phase, a short-run view of a continually evolving political reality...the institutionalizing of a dynamic process in which the pattern of structure is continually undergoing change' (cited in Burgess 2012, pp. 146,153). Similarly, Elazar gives primacy to the processes of government, particularly their 'political-cultural dimension' compared to their structures in determining whether the latter are in any sense 'meaningful' (1987, p. 67).

Accordingly, the study of federal dynamics aims to contribute a systematic approach to the study of federal systems by understanding what changes within federal systems, and what remains stable; why they change in a particular way; why continuity may prevail over change; and how they change in and over time, with respect to the direction, pace, duration, and scope of change (Benz & Broschek 2013, pp. 3-4).

Federal dynamics involves two characteristic concerns that are relevant for my research. The first relates to the *direction* of change, in the form of dynamic centralisation and decentralisation, 'upwards' to the central government or 'downwards' to the constituent units (Dardanelli et al. 2018, p. 1; Colino 2010, p. 20). Elazar predicted that Australia, along with most other federations, would see continuing decentralisation after the mid-1980s, if only because of a lack of leadership at their respective national levels (1987, pp. 206). This forecast now seems misplaced, both generally and for Australia in particular (Fenna 2019; Dardanelli et al. 2018). However, his argument for the need to see centralisation and decentralisation as varying and assymetric manifestations of a complex matrix polity, rather than a simple hierarchy, suggests that a wide range of factors is involved in facilitating or slowing the tendency to centralisation (Fenna 2019, p. 30). The extent to which some of these factors may lie in the bureaucracy of the federal system itself is a key issue explored in the empirical chapters that follow.

Second, the study of federal dynamics treats continuity and change as a continuum, rather than binary opposites. Too much flexibility risks exposure to the vagaries of politics, while too much stability risks a sclerotic rigidity that fails to react to changing environments.

¹³ Friedrich's particular focus on the relationship between federal dynamics and constitutionalism more generally (Burgess 2006, pp. 35, 285) is reflected in the emphasis placed by federal dynamics theory on 'the conditions under which constitutional change and reform are possible' (Benz & Colino 2011, p. 382; see also Behnke & Benz 2009).

Accordingly, it is the interaction of change and continuity in differing patterns of adjustment that shapes the performance of federal regimes within a given period of time, and of course links back to my primary research interests.

The epistemological and methodological framework for this research is provided by Benz and Broschek's four 'layers', or sources of pressure for change within federal systems, with the interaction between these layers generating the combinative variations inherent in federal dynamics (2013, p. pp5ff).

The first layer sees federal institutions as manifestations of deeper social conflicts, linked to territorial differences where these are significant.

The second institutional layer relates to formal institutions and informal routines that establish and distribute authority relationships within and between jurisdictions and, of particular importance for this research, establish regular patterns of behaviour within those institutions, including the system of intergovernmental relations. Accordingly, this layer provides the basis for the findings on the formal and informal structures discussed in Chapters 4 and 5.

Benz and Broschek's third layer, drawing on Friedrich's approach to federalism as a composite body of congruent and divergent ideas (Burgess 2012, p. 150), refers to 'the normative or ideational constructs that actors employ in order to interpret their social and political environment' (2013, p. 6). Data relating to these 'interpretive frameworks', their sources and their impact, is explored in Chapters 5 and 6.

The fourth layer of Benz and Broschek's conceptualisation of federal dynamics is constituted by the distribution of power amongst 'political actors' (2013, p.7), particularly governments and parties. In this case, I have taken this layer to include the intergovernmental bureaucracy at the heart of executive federalism. The way officials negotiate the constraints and opportunities that form the federal landscape, and in doing so are informed by the institutional and ideational context, is at the heart of intergovernmental management and consequently, again, is a major focus for the findings on practice discussed in the subsequent chapters.

The contribution this research aims to make to the theory of federal dynamics lies in the exploration of intergovernmental management as an element of the institutional and ideational layers.

A number of researchers have drawn attention to the interaction between ideational and

institutional elements of federal systems as a source of change (Béland & Lecours 2011; Broschek 2011a; 2010) and in politics more generally (Lieberman 2002).¹⁴

However, although bureaucracies are frequently mentioned as part of their second layer, Benz and Broschek say little about bureaucracies as political actors in their own right, subsuming bureaucratic capacities under the institutional resources of governments in their fourth layer (2013, p. 7).¹⁵ Clearly, however, the bureaucracy itself is an institution which, like federalism, undergoes its own patterns of continuity and change over shorter and longer time frames which may or may not fit with developments in the federal system at any time. Consequently, intergovernmental management may be a locus for the kind of misfit between institutions and ideas that generates divergent forms of federal adjustment (Benz & Broschek 2013, p. 10).

Accordingly, this research begins from the proposition that the relationship between the institutional and ideational parts of a federation is a driver of change, both in terms of frictions or disjunctions between them, but also where they display mutually supporting directions and goals. One potential source of such friction lies in the discursive content and channels in which such ideas are communicated and transmitted. Coordinative discourse that takes place amongst policy actors themselves tends to be much more elaborate in ‘compound polities’ like federations (Schmidt 2008, p. 313) than the communicative discourse that takes place between the political executive and the public.¹⁶ Consequently, Australia’s formal position on the inter-federalism trajectory and the ‘paramountcy’ of the Commonwealth government is coupled with the essentially concurrent nature of Australian federalism (eg Galligan 1995, p. 191) and an ideational layer that promotes cooperation. I would expect to hear echoes of this in the communications between officials, a matter I take up in the discussion of the ideas and cultures of Australian federalism throughout the findings.

One further element of federal dynamics theory that bears on the research relates to the question of what constitutes ‘change’, and the distinction between ‘non-deliberate evolution and

¹⁴ Simeon had already drawn attention to this interplay in his classic study of Canadian intergovernmental management, referring to policy making as an outcome of the interplay between ‘(a) broad social and cultural characteristics, (b) institutional and constitutional factors, and (c) the particular norms, attitudes, goals and perspectives of decision-makers’ (1972, p. 8).

¹⁵ Thelen and Karcher, for example, note that longevity amongst their bureaucrats gave Germany’s state governments relatively greater power than the federal government in the post-war period (2013, p. 126). I will examine the issue of longevity in more detail in Chapter 5.

¹⁶ I discuss these terms in greater detail at Chapter 3.1; I have introduced them here to underline the areas in which I am in dialogue with the general field of federal dynamics.

Federal dynamics theory generally tends to focus on constitutional reform as the outcome of interest (see, for example, Benz and Colino 2011; Benz & Broschek 2013). Given the inherent difficulties and improbabilities of significant, let alone constitutional reform in Australia, however, my research is predicated on the assumption that change at the incremental level is also of interest, such as whether important processes such as negotiations and agreement-making provide a potential venue for such change.¹⁷

The history of pragmatic and incremental adjustment in Australian federalism described above means that reformers in the Australian context 'are often institutional gardeners more than institutional engineers' (March & Olsen 2009a, p. 15). Most scholars of Australian federalism note that the reform priorities of public officials place more importance on improving the operation of the existing federal system than on reshaping the federation through constitutional amendment (Bruerton & Kildea 2017, p. 219).

Accordingly, the focus here is as much on processes of adjustment as on deliberate strategies of reform and innovation. As defined by Benz and Colino, adjustment is a process of 'non-deliberate, spontaneous change, which affects some parts or specific institutions of the federation or different policy sectors by means of the daily occurrence of formal or informal modification of rules, structures or legitimizing beliefs' (2011, p. 390).¹⁸

Given the lack of a strong legitimising platform for decentralisation in Australia, it becomes important to understand why and how such beliefs change, how they are embodied in bureaucratic practice, how the bureaucracy 'thinks', and why it does so, not least because bureaucrats have a significant role to play in shaping the system, whether as cultivating 'gardeners' or transforming 'engineers'. The methodological implications of a focus on the ideational context are explored in Chapter 3, and the content of these ideas and values, as they

¹⁷ The distinction between the concerns of this research and federal dynamics more generally need not be drawn too finely, however, as even substantial changes in federations are normally the result of 'pragmatic non-constitutional political adaptation' (Watts 2005, p.251).

¹⁸ In contrast, historical institutionalists like Streek and Thelen emphasise that incremental endogenous change depends on deliberate strategies adopted by institutional actors who exploit the gap between rules and their implementation (2005, p. 13). Whether deliberate or not, my research is predicated on the shared recognition in these conceptual frameworks that studying incremental change requires 'special attention' to be paid to policy makers, 'if their rationale, goals, beliefs and 'technical' capabilities and their impact on policy dynamics are to be properly understood' (Howlett & Migone, 2011, p.60). These factors are all explored in detail in the empirical findings below, reflecting the close relationship between policy and federal dynamics, as summarised in **Figure 1** and its discussion above.

arose in the course of the research, in Chapters 5 and 6.

2.2.2 Australian studies of intergovernmental management

More than three decades have passed since Warhurst described an emerging role in intergovernmental management for central agencies, in response to policy problems that increasingly crossed traditional functional silos. He compared what he called these ‘gossamer threads’ with the ‘rods of iron’ exercised by a closed technocracy in the line departments that applied its expertise to policy problems ‘in an atmosphere of consensus and common purpose’ but whose main focus was to defend and if possible increase spending on that function and which ultimately led to policy making that was ‘segmented and uncoordinated’ (1983, p.2).

Similarly, it is now almost 25 years since Galligan noted the relative neglect in federalism studies of intergovernmental relations, ‘despite their significance for Australian politics and public policy’ (Galligan 1995, p. 189); it is even longer since Galligan, Hughes and Walsh argued that the policy and administrative aspects of intergovernmental relations at the bureaucratic level are “less well known” than the formal institutions and processes of the federal system and the political relationships between Commonwealth and state leaders (1991, p. 4).

This is not to ignore the long tradition of federal scholasticism in Australia, by individuals such as Davis, Sawyer and others; it is merely to acknowledge that such studies have often reflected the prevalent concerns of political science at the time with formal structures and processes of authority, governance and finance.

Thus, for example, Fenna’s overview of the academic study of federalism since the 1930s, including the contributions by Wheare, Sawyer and Davis, notes that ‘A good part of the running on Australian federalism...has been done by those based in other disciplines, particularly constitutional law and economics’ and concludes that the treatment of Australian federalism in Australian political science has generally focused on normative critiques of federalism’s legitimacy (2009, p.146). Fawcett and Marsh conclude similarly that ‘the literature on Australian federalism has been concerned with either normative issues, such as the compatibility between federalism and responsible government, or more institutional and legal issues’ with, more recently, an ‘overwhelmingly statecentric’ literature that has focused on the ‘high politics’ of executive federalism, but less so on matters of governance or the operations of networks (2017, p. 64).

Only a handful of studies has explored the interface between public administration and federalism in Australia, since the concept of intergovernmental management began to be widely used, and despite the broadening and deepening of the relationships between governments that has taken place since the 1990s (Phillimore & Harwood 2015, p.42). These studies are summarised in Appendix 1.

This sporadic research history may reflect the ‘pragmatic’ nature of Australian federalism, adopting Hollander and Patapan’s seminal definition of pragmatic federalism as characterised by ‘a direct engagement or confrontation with pressing problems, an engagement unmediated by larger theoretical concerns’(2007, p.281).¹⁹ The history of significant reforms to the Australian federal system demonstrates their distinctly utilitarian nature, with key phases of federalism’s evolution occurring in pursuit of (micro)economic reform — the Closer Economic Partnership with the States (1990), National Competition Policy (1995) and the National Reform Agenda (2006) — leaving the key centralising dynamic of the federation intact.

There is, thus, a distinctly pragmatic flavour to the small number of studies of intergovernmental management conducted to date even though, as Inwood et al. point out in describing the framework summarised at **Figure 1**, ‘a deeper understanding and application of theory and analysis at the interface of these literatures is required to better understand and address the policy challenges of today and of the future’ (Inwood et al. 2011, p. 4).

Consequently, most of the Australian studies aim not just to understand the nature of intergovernmental management in Australia but to assess and enhance its effectiveness: to achieve ‘optimal workability’ (Leach, 1976, p.12); ‘improv(e) the organisational arrangement and processes for inter-governmental relations’ (Weller, 1996, p.95); assess whether there is sufficient ‘strategic capacity’ in the Department of the Prime Minister and Cabinet (Menzies 2012a, p.409); identify those conditions ‘that allow senior officials to exercise the greatest influence’ (Davis & Silver, 2015, p.468); improve cross-jurisdictional collaboration on mental health policy (Smullen, 2017); and identify barriers to reform (Bruerton & Kildea, 2017).

¹⁹ Earlier uses of the term ‘pragmatic federalism’ are also relevant, referring to ‘constantly adjusting intergovernmental relations, fashioned to current needs, with an emphasis on problem solving and a minimal adherence to rigid doctrine’ (Glendenning & Reeves, 1977, p.8). Lépine has an interesting take on why federalism generally is not an object of study in its own right, arguing this is because many political scientists view federalism as a series of ‘idiosyncratic attempts to solve a political — or societal — problem by pragmatic compromise’ (2015, p. 35).

Apart from this generally limited body of research, a review of the literature to date shows that, until very recently, research focused almost exclusively on officials in central agencies but not those in line departments (very much in line with Australia's executive form of federalism), and in the Commonwealth but not state jurisdictions.²⁰ Accordingly, my research methodology and the findings below pay particular attention to the relative roles played by central and line agencies, at both the Commonwealth and state levels, in processes of policy development and implementation.

Similarly, between Leach's original foray on this issue and the 2015 *Future of Australian Federalism Survey* (Smith & Brown 2017, p. 20), there was little systematic research on practitioners' attitudes towards federal arrangements generally, nor on the practice of intergovernmental management. For example, a particularly important normative component of federalism is the idea of subsidiarity, and consequently Deem et al. argue that

the different motivations with which each level of government approaches subsidiarity are likely to colour public servants' attitudes towards the principle, leading to difficulties in translating the principle into reform (2015, p.422).

Even the latter studies say little about where these attitudes have come from: are there prevalent ideas that influence the way public servants go about their work? How do they change over time and how do they translate into day to day decisions and strategies in intergovernmental management practice, including the issues I am pursuing here on the question of agency? As Kay summarises, 'the existing literature provides little on the relationship between intergovernmental processes and the socialisation of public servants from different jurisdictions towards a shared problem- solving perspective in Australia' (2017, p. 39).

Finally, with the exception of Arklay et al. (2017), few of these studies do more than touch tangentially on the practice of intergovernmental management, the day to day 'structural considerations' and the 'behavioral and intellectual challenges that any good manager must take into account' (Lynn 2012, p. 23) that characterise this area of public administration.

In summary, this is the primary research gap to which my data responds. I aim to contribute not only to the small body of knowledge on this issue, but also, at least in part, to remedy the tendency to focus on central agencies and the Commonwealth; the lack of differentiation

²⁰ In relation to the latter, Painter's analysis of the work of central agencies in state governments (1987) is focused on *intra*-state coordination; he treats the overlapping responsibilities and agreement making processes of the federal system as a contextual challenge for the coordinating departments in his study but does not explore them in any detail.

Gardening or engineering? A theoretical survey of federal dynamics and intergovernmental management between policy areas; and the need for a discussion of the agency officials exercise and its implications of for broader questions about the federal system's capacities.

2.2.3 Federal dynamics and public administration

Having explored the central element of the diagram in **Figure 1**, the remainder of this chapter explores the implications of federal dynamics for each of the major theoretical domains this research traverses.

A starting point for this analysis is the dominant role played by Commonwealth and state government executive branches in managing the federation. It has been argued that Australia has developed the institutions and processes of this 'executive federalism' more extensively than any other federation (Watts, cited in Menzies 2013, p. 383),²¹ with the normative consequences for Australian democracy I have described above.

More recently, however, a developing focus on 'governance' in public administration has suggested a closer look at the way decision makers work and respond to a context of increasing interdependence between governments and other sectors (Clarke 2007, p. 55). Issues of relevance to my research that arise from the executive branch's domination include the implications for the practice of intergovernmental management, in terms of the relations between central and line departments, the way policies are made and by whom and the importance of networks amongst officials. Accordingly, in this section I will link the earlier discussion of the ideational context inherent in federal dynamics to the bureaucracy of the Australian federation.

The arena in Australian federalism for such strategies to form and play out is made up of a closely interlocking number of formal and informal elements. The formal side comprises organisations and structures (COAG, ministerial councils and their supporting working groups, the Grants Commission, Productivity Commission and so on) and the processes and systems that constitute, give life to and support these structures (COAG's National Agreements, Performance Reports and Dashboard, the vertical and horizontal processes of fiscal federalism).

The informal side includes a stable system of networks and relationships that persist beyond the incumbency of particular individuals who inhabit particular offices; the interests, values

²¹ Simeon notes a similar centralisation in Canada, 'undermining the potential agreement on substantive issues that might be achieved by line ministries sharing common policy objectives and political constituencies' (2006, p. 326).

and norms that suffuse those networks and relationships and guide the behaviour of actors within them; and the history and culture of the Australian federal system that shape and are in turn shaped by the other elements listed here (perhaps ‘cultures’ is a better term, to differentiate the varying narratives, discourses and perspectives that obtain in different jurisdictions or organisational components).

All of these components combine to form the ‘institution’ of federalism, noting March and Olsen’s caution that ‘the disentanglement of institutional effects is particularly difficult in multilevel and multicentered institutional settings’ (2009a, p. 8). Their use of the term ‘institution’ specifically refers to

a relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances (2009a, p. 3).

The components of this definition — the ‘rules’ and ‘organized practices’ that inform one another and, in turn, inform and are informed by ‘structures of meaning’ — are an important starting point for my analysis of the role of intergovernmental management in federal dynamics. For the purposes of the analysis that follows, I have adopted a definition of rules as ‘shared normative understandings about what a participant in a position must, must not, or may do in a particular action situation’ (Aligica & Tarko 2014, p. 64) which, consistently applied, generates the ‘organised practices’ of intergovernmental management.

The interface between federal dynamics and public administration, with a focus on continuity and change in the federal system, brings together two sets of issues which I explore in the findings. First, it raises questions about the reciprocal relationship between the federal system’s formal structures and processes and the broader ‘ideas’ that underpin and inform and are informed by them. Second, such continuity and change reflects the way ideas become codified as norms and conventions in intergovernmental management, and thereby serve as cognitive filters through which officials understand their goals and interests and develop their strategies (Hay 2011, p. 69).

There is, of course, nothing particularly new about this nexus of concepts. Simeon’s classic study of intergovernmental management in Canada, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*, is now almost half a century old. And yet the questions he explored then, and in that context, around the relationship of federal structures to the

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behaviour of decision-makers and ultimately to the kinds of policy which result (1972, p. 3)
were ‘largely uncharted territory’ at the time, and still appear so today.²²

2.2.4 Federal dynamics and policy-making

If the interface between Australian federalism and public administration is highly under-researched, the same could not be said for the interface between federalism and Australian policy-making, at least since the 1990s.²³ Writing in *Publius* in 1990, Chapman described how ‘a recent resurgence of Australian interest in federalism has emerged from concern with the consequences of public policy, which has directed attention to outcomes rather than inputs’ (Chapman 1990, p. 70). This resurgence appears to reflect a broader trend in political science at the time of growing interest in the study of policy processes, outcomes and capacity in a federal context (Inwood et al. 2011; Béland & Lecours 2016, p. 684).

‘Public policy is different in a federation’ concludes one such study (Davis et al. 1993, p. 67). Through its distribution of policy-making responsibilities, federalism ‘creates at least the possibility of greatly extending and complicating the stages of the policy cycle’ (Franks & Olson 1993, p. 17). More recently, Béland and Chantal note that ‘a growing number of institutionalist scholars have explored the way in which federalism and other territorial arrangements shape regional identities while creating constraints and opportunities for interest groups and policy-makers’ (2004, p. 242). These identities, at a jurisdictional level, form an important framework for the strategies and interests at play in intergovernmental management, as explored in the findings below.

The study of federal dynamics adds further causal and temporal dimensions to the policy making cycle, because it is through specific policies and policy fields that the effects of federal dynamics are largely felt. Thus, for example, Capano compares the impact of federal dynamics on the governance of education systems in federal states, focusing in the Australian case on the centripetal development of national education policy via intergovernmental relations (2015, p. 335).

Much of the research in Australia on policy making in a federal setting has focused on the

²² It is interesting to note that the theoretical fields depicted in **Figure 1**, and their intersection, largely reflect Simeon’s framework comprising ‘a set of interdependent actors, or partisans; they operate within a certain social and institutional environment; they have an issue or set of issues on which they must negotiate; none has hierarchical control over the others; they have varying political resources; they use these resources in certain strategies and tactics; they arrive at certain outcomes’ (1972, p. 12).

²³ Although this area had previously experienced the same ‘general neglect of intergovernmental relations’ noted by Galligan, Hughes and Walsh at that time, by comparison with the US and Canada (1991, p. 4).

Commonwealth's capacity to prevail where it has differences with the states in the formulation and implementation of particular national policies (Parkin 1996, p. 4). Thus, in the area of economic reform, cooperation in the development of national regulatory frameworks has waxed and waned in the context of the prioritisation accorded to it by successive federal governments and their approach, seen by some as 'creeping centralism under a collaborative guise' (Painter cited in Stewart, 2000).

However, other approaches have taken a more balanced approach, reflecting Poirier and Saunders' call for greater 'nuance' in recognising the capacity for sub-national governments to influence federal directions in what they call the 'federal balance' (2015, p.494). For example, Parkin and Summers note that 'the quite distinctive South Australian history of public housing provision, though it has been significantly funded under [the national] tied grant scheme, is explicable largely by policy developments and priorities at the South Australian level' (Parkin & Summers 1996, p. 60). Smullen argues that 'States/territories and professional actors in civil society have been formative in shaping the [Australian] national mental health agenda, thus challenging simplified notions of centralisation' (2015, p. 280). Chappell's work on the impact of feminist bureaucrats on social policies like child care, safe refuges and women's health funding suggests they have tended to concentrate efforts at one level or the other as the overarching federal intergovernmental relationships and the preparedness of individual states to 'go it alone' have varied (Chappell 2002, p.163).

Accordingly, a key issue raised in the relationship of federal dynamics and policy-making is the way periodic shifts in the centripetal or centrifugal nature of policy-making reflect changes to federalism's structures, processes and political culture, both at any point in time and over time. However, the way policies are developed in federal systems is generally analysed as an outcome either of the adoption of policies by political executives, or of blockages through the mobilisation of interests or formal systemic veto points. Consequently, the role played by bureaucratic relationships and processes in policy formation is less well understood, including why they conceived of such alternatives in the first place, and how and why policies change in response to the changing views of policy actors, including bureaucrats (Béland 2009, p. 703).²⁴

A second issue in this nexus relates to the interaction between the content of policies and the federal structures and processes in which they are implemented. Important research on this

²⁴ Kingdon's multiple streams analysis is an exception, which I discuss below.

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issue by Peterson, Rabe and Wong (1986) proposed that the effectiveness of policies was a product of whether they were redistributive as opposed to developmental, and the extent to which their administration was by apolitical professional administrators rather than political appointees. Their analysis is limited because it does not include regulatory-type policies, which are of much greater significance in Australian intergovernmental relations; regulated entities such as businesses have a much greater capacity to influence the policy agenda than the target populations for redistributive and developmental policies (Wanna 1991, p. 316). In general, then, we need to pay attention to the specific content of the policies over which officials are negotiating in looking at how these processes are affected by their federal settings.

A third issue linking federal dynamics and policy-making relates to the way policies move from jurisdiction to jurisdiction, and are taken up by the national system overall. Hollander points out that, although policy transfer ‘forms one of the standard ‘bullet points’ in any description of the strengths of federal systems...few Australian scholars have directly explored the connection between federalism and policy experimentation’ (Hollander, 2013, p.129). Indeed, it took more than 40 years for the first comparative study of state political and administrative traditions in 1960 to be followed up (Wanna 2003, p. 418).

The policy challenges I alluded to in the previous chapter, and the concurrent nature of the federal system, highlight the federal system’s capacity for policy transfer, experimentation and the role of the states as mediators and coordinators. In turn, this points to an important role for the bureaucracy, as choices are made about inter-jurisdictional processes by which ‘knowledge about policies, administrative arrangements, institutions and ideas in one political setting (past or present) is used in development of policies, administrative arrangements, institutions and ideas in another political setting’(Dolowitz & Marsh, 2000, p.5). These processes challenge the tendency for research on federal dynamics to focus on the impact of critical junctures and path dependency. The processes of policy transfer and diffusion require the exercise of policy leadership at different jurisdictional levels and a role for policy entrepreneurs generally in policy learning, conducting research, experimentation, trialling, pilots and evaluation. An interesting issue is the nature of shared regulatory space in a federation, particularly given Australia’s federal concurrency, and how policies reflect whether such spaces are overlapping, related, interacting or concurrent (Freeman & Rossi 2012, p. 125).²⁵

²⁵ Although they are not specifically applying these terms in a federal setting, Freeman and Rossi are nevertheless

A final issue raised in the research relates to the role and significance of vertical and horizontal policy networks (within and across the Commonwealth-state boundaries), in particular policy domains, including network characteristics such as policy actors and their tradable resources, preferences, strategies and perceptions of problems and solutions, plus any network-specific rules of interaction (Compston 2009; Smullen 2017).

2.2.5 Policy and public administration

The third nexus, between policy and public administration, involves questions of how the social and institutional environment of the federal system affects bureaucratic practice, and conversely how practice interacts with the substance of the policies on which intergovernmental managers are working. As the policy agenda has grown in reach and complexity, the federal system has required and reflected broader developments in public administration that involve a shift from hierarchical to networked forms of governance, the negotiation of interests and the management of interdependencies and relationships (Painter 1987; Rhodes 2016). One implication of this development is a need for more research on how intergovernmental managers deal with divided and partial responsibility and shared accountabilities (Agranoff & McGuire 2004, p. 506). These issues are explored in detail in the findings that follow, including questions about how officials manage processes of control, coordination and innovation in an environment of overlapping policy and administrative complexity.

The interface between policy work and public administration also raises issues about how the hierarchical and non-hierarchical aspects of intergovernmental management are related and negotiated, rather than focusing on one at the expense of the other. For example, Colebatch (echoing Painter's analysis described above) draws attention to the tension between a 'vertical' dimension in policy work structured through formal hierarchies of authority, and a 'horizontal' dimension focused on structured interaction (Colebatch 2006, p. 10).

This corresponds well with the focus in this research on the way formal directions and frameworks, set by Commonwealth and state governments and central agencies, form a context for the networks of individual officials and their interactions. Similarly, the findings here

addressing the shared regulatory space that results from the fact that in the US, as I have already alluded to in the Australian case, 'all of the results that the federal government strives to achieve require the concerted and coordinated efforts of two or more agencies' (US General Accounting Office, cited in Freeman and Rossi 2012, p. 1134).

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explore the issue of when and how discretionary boundaries in intergovernmental management are set, particularly as officials exercise a range of policy roles that are not completely determined by the politics of the day but are vital to intergovernmental management: information gathering, communication, network management and so on. Important parts of this lower level work contribute to higher level policy functions, such as the information gathering and collaboration necessary to support harmonisation initiatives.

More recent work on the public administration/policy nexus by Sowa and Lu argues that questions about collaboration at higher or earlier stages of the policy cycle are quite different from those looking at collaboration used to deliver services on the ground (2017, p. 90). This distinction is particularly relevant to federal systems, where collaboration is only one of many modes of interaction in a multi-jurisdictional structure.

The issue of how policy problems are prioritised, defined and framed, at any one time and over longer periods, leads to a focus on federalism's discursive aspects. Hoppe describes policy making as the outcome of a 'never-ending series of communications and strategic moves by which various policy actors in all kinds of forums of public deliberation and...policy subsystems construct intersubjective meanings' (2011, p. 61) based on their desire to move politically salient problems into the 'structured problem' category. This process highlights both the importance of framing and agenda setting in the federal setting (Menzies 2012b, p. 2) and the fact that such policy work is inherently a contested exercise requiring processes of negotiation between jurisdictions. Accordingly, the application of a discursive perspective on federal dynamics is described in detail in Chapter 3.

2.2.6 Federal dynamics and institutional resilience

I indicated above that a particular question raised by federal dynamics is its focus on the relationship between the institutional and ideational layers of a federation. In that context, Thelen and Karcher draw attention to a puzzle with implications for the study of federal systems overall, although they are specifically looking at the *Bundesrat*'s characteristic display of 'surprising stability through unsettled times, and significant changes in periods of 'normal politics,' even under the guise of considerable formal institutional stability' (2013, p. 136).²⁶

²⁶ For example, the decentralisation of Spain's health system appears to present a case of major change coupled with stable institutions (Rico and Costa-Font 2005, p. 247). In the Australian case, major change (such as the Commonwealth's expanding use of its fiscal capacity and the reinterpretation of its powers) has tended to involve centralisation, while equally maintaining institutional stability.

These authors briefly refer to ‘the mechanics of reproduction’ as a possible explanation. This term suggests we take a closer look at the issue of institutional resilience and what insights it might offer to a consideration of continuity and change in a federal setting.

Broadly defined, institutional resilience is the capacity for reacting and adapting to sudden, unexpected environmental changes. An institution is resilient to the extent that, despite such internally or externally generated shocks, it maintains its effectiveness over time (Aligica 2013, p. 109; Steinberg 2009, p. 65).

Institutional resilience is still a relatively new body of work, emerging from the study of how ecological systems and societies interact (Aligica & Tarko 2014; Sjöstedt 2015; Steinberg 2009). A number of researchers, however, have pointed to its potential contribution to institutional theory more generally, particularly in relation to the Ostroms’ work on managing common resource problems (eg Aligica 2013, p. 103; Aligica & Tarko 2014, p. 54).

First, from a normative point of view, the concept of resilience couples the temporal perspective of federal dynamics with the notion of performance and institutional long term viability (eg Aligica 2013, p.105). Institutional resilience contrasts equilibrium and stability over the longer term against ‘pervasive political, economic, and cultural change and associated institutional turnover’ (Steinberg 2009, p. 63). Similarly, a federation is ‘robust’ to the extent it maintains its functionality over time and despite internal or external shocks (Bednar 2014, p. 234). This reflects the questions around Australian federalism’s performance and its capacity to respond to longer term challenges, as outlined in Chapter 1.

Second, studies of federal dynamics generally focus on the process of constitutional amendment as an indicator and outcome of federal dynamic processes (Behnke & Benz 2009, p. 214). Institutional resilience, on the other hand, is interested in how processes of institutionally fostered and incentivised learning and adaptation provide a balance between too much and too little change. For example, Bednar points to policy subsidiarity as an opportunity for the federal system to learn more about its environmental challenges through experimentation and data collection (2014, p. 239). These are matters of profound interest for the study of how the bureaucracy, as an institution in its own right, responds to challenges and shocks emanating from the federal system and from the polity more generally. A particular focus for the interviews discussed in Chapters 4 to 6 is on the capacity for learning across intergovernmental networks.

Third, the body of work on institutional resilience lends a counterweight to the tendency in studies of federal dynamics to account for both institutions and ideas using the conceptual framework of historical institutionalism (eg Broschek 2013; 2010).²⁷ Institutional resilience introduces an alternative set of explanations for change arising from the values that stimulate and guide actors faced with a choice between stasis and active institutional maintenance.

This brings us to the final conceptual insights from institutional resilience, its focus on the rules that govern such adaptation and innovation. This focus is derived from the new institutionalism's general interest in formal and informal rules and their relationship to institutional change (Crawford & Ostrom 1995; Lowndes 1996; March & Olsen 2009b). Accordingly, rules (as defined in section 2.2.3 above) provide 'the basic operational element in building or supporting resilience' (Agilica & Tarko 2014, p. 64). The latter authors note the risk of oversimplifying the complexity of this rules-resilience nexus, and counsel an approach based on trying to understand the dynamic problem of how these rules emerge (2014, p. 65). Accordingly, a discussion of the 'rules-in-use' formed an important component of the interviews I conducted with practitioners: the nature of these rules, how they reflect norms and values relevant to the federal system, how they inform actors' strategies in the context of intergovernmental management and how they emerge and develop.²⁸

2.3 Structure and Agency

2.3.1 Agency in a federal framework

The proposition that the agency of officials has an important role to play in Australian federal dynamics raises the tectonic theoretical divide between 'structure' and 'agency'. Many prominent social scientists describe this as 'the most important theoretical issue within the human sciences' (McAnulla 2002, p. 271), although, as I have indicated, my research is also predicated on its practical significance.

If the individual agency of officials *matters*, an important research question arises about how the relationship between federalism's ideational and institutional perspectives bears on such agency, and how officials respond to those settings in their work.

²⁷ Similarly, Simeon's 'postscript' to his classic study of intergovernmental relations in the 1970s highlights path dependence as the cause of 'this continuity of intergovernmental relations, in the face of the extensive changes that we have seen in Canada's social structure, economy, and international position' (2006, p. 328).

²⁸ In effect, I was following Ostrom's precept that understanding how rules-in-use structure an action situation requires the interview 'to ask nonthreatening, context-specific questions about rule configurations' (2007, p. 39). I discuss some issues involved in the concept of 'rules-in-use' at Chapter 3.2.

The relationship between structure and agency, and particularly how institutions structure behaviour but are themselves structured by behaviour, is a central analytic concern for institutionalism generally (Hay & Wincott 1998, p. 951; Hall & Taylor 1996, p. 939) and more specifically for the study of governance (Grin & Loeber 2007, p. 202). Dowding considers the agent-structure problem as ‘solved’ by placing agents in highly structured contexts, while leaving room for agency in structural explanation (2008, p. 33). Similarly, Hay suggests the relationship between structure and agency is not a ‘problem’ to which there is, or can be, a definitive solution, but as ‘a language by which ontological differences between contending accounts might be registered’ (Hay 2002, p. 91). Thus, the relationship between structure and agency should not be seen as binary and exclusive, or one in which either structure or agency has primacy, but a way in which the relative impact of each side of this relationship has to be understood in terms of the specific context or problem being studied.

However, if we are to use Hay’s ‘language’ in a way that contributes empirically to our understanding of the research question, we need to avoid what Archer calls ‘the fallacy of central conflation’, making structure and agency so inseparable that we are unable to identify whether their distinctive qualities bear differentially on the research question. This would make it difficult, for example, to determine the relative contribution each makes to particular processes of change that a federation is undergoing (Archer 1996, p. 688; Rocco & Thurston 2013, p. 56).

Keeping the warning in mind that ‘conceptualizing agency is one of the oldest challenges within social science’ (Leipold & Winkel 2016, p. 1), I have defined agency as the abilities and capacities (the preconditions) and the strategies and actions (the outcomes) of individuals or groups to realise their intentions in an institutional context and, in so doing, to affect that context in ways that affect the possible actions of others.

My definition of agency responds to Lieberman’s caveat that solely focusing on ideational accounts of change run the risk of getting it wrong: ‘ideas alone do not create the incentives or opportunities for action,’ he warns, ‘and not all holders of alternative political ideas act on them’ (2002, p. 698). Instead, I aim to leverage what Lieberman calls the ‘strengths of institutionalism’ by providing an account of what bureaucrats do as ‘purposive agents under structural constraints, of the aggregation of interests, of the distribution and exercise of power,

Gardening or engineering? A theoretical survey of federal dynamics and intergovernmental management and of the social construction of political rationality' (2002, p. 699).²⁹ These constraints define, guide and motivate the range of actions available to these actors but are, in turn, affected and modified by these individuals and groups. Accordingly, the findings that follow address the respective components of Lieberman's 'account' in the above quote.

A central concern of the research is the question of whether the federal system itself is to be treated as an exogenous factor or as 'interpreted' by officials. On the one hand, there is clearly a federal 'tradition' that has shaped the Australian constitution, Senate, High Court decisions and fiscal processes (Rhodes 2005, p. 140). But how officials understand that tradition, what they see as important in the federal system, and what it means for their work in intergovernmental management, was a central focus for the interviews and the findings reported below.

Some insights into this question are provided by data from the Australian Constitutional Values Survey on the attitudes to federalism of people with experience working in government (Deem et al. 2015). The data suggests that those who have worked at both the Commonwealth and state/territory level have a more 'federalist' view of the principles of subsidiarity, whereas those who have worked for the Commonwealth alone are more uncertain on the matter. For my purposes at this stage, what I draw from this study is the way officials' perceptions of the federal system, and the norms arising therefrom, are closely related to the jurisdictional and policy settings in which and on which they have worked, a matter that I explore in detail below.

A second research question prompted by the relationship of structure and agency is the relative significance of the formal and informal institutions that constitute the federal system for the exercise of agency, and consequently for change or continuity in the federal system. What, if any, is the relationship between the formal elements of the system and the agency of actors within it? Do the informal elements of intergovernmental management allow greater individual interpretation of the relevant rules and conventions, and hence encourage the exercise of agency? This is a specific focus for the discussion of the role of formal and informal structures in Chapters 4 and 5, including the impact of structural changes in the federal system such as

²⁹ I note Power's argument that 'it is time that we put aside the distinction between Old and New Institutionalism. When the distinction was introduced in the 1980s...it was a useful one, but its continued use has made it too easy for valuable works to be ignored if they are cast in somewhat formalist terms. But we cannot gain a fuller understanding of governance without careful attention to formalities' (Power, 2009, p. 383).

the abolition of a number of ministerial councils in April 2013.

More broadly, the interviews explore the interrelationships between critical components of intergovernmental management such as the formal structures of the federal system, the way resources such as power, policy leadership and funding are distributed and allocated, and legitimacy expressed through communications between officials and between the executive and the public.

Third, how is the capacity for the exercise of agency distributed within and across the federal system? Can we simply assume that agency works differently at different levels, with higher levels of agency at the individual official's more immediate, micro level, but with much less at macro levels of the federal system; or within jurisdictions, do officials in central agencies have a constraining capacity over the agency of those in line departments and agencies? Again, these questions have implications for the dynamics of the Australian federation, not least because they suggest that change and continuity are not necessarily working in the same directions or with the same intensity in different parts of the system. Moreover, such questions raise the issue of the implications of participants attaching different meanings to issues, agreements or events.

Fourth, does change depend on the policy area (noting the discussion of policy content at section 2.2.4)? For example, Encel hypothesises that the less a particular policy issue is a matter of electoral concern to the government of the day, the more bureaucratic agencies have the power to define the priorities in that area, or to reshape decisions made by politicians (Encel et al. 1981, p. xix). Similarly, in analysing how the perceptions of US State government administrators 'or how administrators view the world guides their actions and their relationships to other actors', Cho and Wright find that different policy arenas, such as social security versus transport, and different types of state agencies, produced different forms of involvement with intergovernmental relations (Cho & Wright, 2004, p.452 n.1).

The policy transfer literature has identified a number of significant constraints on the process, such as reluctance and resistance by the 'receiving' jurisdiction, practical difficulties in transferring policies from one jurisdiction to another, contextual factors such as path dependency and application constraints such as high transaction costs (Benson & Jordan 2011, p. 372). Looking at policy transfer through the lens of practitioner agency and policy brokerage allows me to ask whether certain constraints are more prominent for particular practitioners as

Fifth, the context of public administration raises a set of issues specifically related to the nature of bureaucratic agency itself.

Despite the limited study of intergovernmental management to date, a clear theme in these studies has been the differential roles played by central and line departments, and their different interests and perspectives (for example, see Poirier & Saunders, 2015; Harwood & Phillimore, 2012; Botterill, 2007; Painter, 2001; Weller, 1996; similar issues in the Canadian case are discussed in Bakvis & Juillet 2004). Painter, for example, attributes much of the greater collaboration during the 1990s to the leadership of central agencies at the Commonwealth and state levels, while at the same time describing how 'officials in state government line departments such as health and education often have to be pulled back into line by central co-ordinating agencies for being too cosy with their intergovernmental partners, to the detriment of their own government's political strategy' (2001, p. 140).

Noting that 'the evidence remains ...quite inconclusive about the effects of formal structural-organizational factors on the autonomy of agencies' (Maggetti & Verhoest 2014, p. 247), a key issue relates to agency exercised not just as a matter of 'actor level autonomy', but the relative *organisational* autonomy exercised by officials working in central as opposed to line departments, or portfolio departments as opposed to statutory authorities. Again, I have specifically discussed this issue in the findings below.

Finally, in the discussion of my methodology in the next chapter, I distinguish the discursive institutionalist approach from other forms of institutionalism that de-prioritise agency, emphasising the 'creative relationship' between officials and their institutional environment (Grin & Loeber, 2007, p. 206).

2.3.2 The role of change agents in intergovernmental management

An important cluster of issues explored by federal dynamics that is relevant to my research relates to the interaction between the formal structures of a federation and its policy actors, particularly the extent to which the latter are 'enabled to encounter institutional rigidities and to exploit their reconfigurative potential' (Broschek 2011a, p. 540). A focus on the role of change agents raises a different set of dynamics of change and stability from those typically examined through the lens of path dependency (Broschek 2013, p. 96; 2011a, p. 553); while the latter focuses on exogenous sources of change, the role of change agents highlights

endogenous change arising from their response to institutional constraints. As Aligica and Tarko put it in their discussion of institutional resilience, ‘what makes change endogenous and everlasting is the fact that people do not just passively obey the existing rules, but they also actively try to change those rules’ (2014, p. 57).

One strand of such actor centred explanation focuses on actor-centred institutionalism which, in turn, is derived from rational choice theory (eg Scharpf 1997), and explains policy change in terms of the different resources and opportunities institutions afford actors in the policy making process (Boessen 2008; Sheingate 2003). In the case of federal dynamics, the processes and outcomes of stability, change and adjustment are, to some degree, seen as a result of the ‘push and pull’ between status quo defending actors and entrepreneurial agents (Broschek 2011b, p. 666).

There is an interesting dynamic at work in the role change agents play in intergovernmental management, as will be apparent when I look more closely at their roles and motivations in Chapter 6. Broschek suggests inter-state federations, with their dualistic allocation of responsibilities, weaker veto possibilities and high levels of statutory interpretation, are more amenable to conversion and hence offer more scope for individual agents of change (2011b, p. 679). This suggests that if, as I have argued above, Australia’s federal culture tends towards an intra-state model, the role of change agents might be more constrained to a ‘layering’ role involving amendment and change to existing institutions, at least in terms of the historical-institutionalist depiction of change agents (eg Mahoney and Thelen 2010, p. 15ff). This proposition is tested in Chapters 4 and 6.

My use of the term ‘change agents’ raises the cognate term ‘policy entrepreneur’, not least because of its use by Broschek and others in their discussion of federal dynamics (Broschek 2011a, 2011b). Wright makes an early reference to ‘intergovernmental relations entrepreneurs’ in his discussion of the importance of state government administrators (1978, p. 249). More recently, the concept of policy entrepreneurs has appeared in ‘American Political Development’ theory in framing issues, defining problems, and influencing agendas (see, for example, Sheingate 2003, p. 188). Agenda-setting raises Kingdon’s multiple streams analysis as the most common theoretical framework for understanding the role of policy entrepreneurs,³⁰ and, consequently, it is in that context that I distinguish my use of the term

³⁰ Cairney refers to policy entrepreneurs as ‘the heroes of the M[ultiple] S[treams] A[nalysis] story’ (2018, p. 200)

Kingdon's approach to their role is predicated, first, on his interest in agenda-setting; he is generally not interested in bureaucrats as policy entrepreneurs because he is at pains to point out that bureaucrats, in his view, are not influential or active at that stage (Kingdon 2003, p. 30; Winkel & Leipold 2016, p. 110). As a result, critiques of his analysis point to the lack of a detailed understanding of what agency means and how it actually works to open and couple streams and respond to policy windows (eg cf Mukherjee & Howlett 2015, p. 66). An example of this limitation is provided in the discussion in section 4.4.3 of the policy brokerage carried out by officials in intergovernmental bargaining and negotiating.

Second, policy entrepreneurs in multiple streams analysis are typically coupling 'problems, policies and politics' during policy windows that open briefly because of a major political event or policy crisis (Kingdon 2003, p. 168; Ackrill et al. 2013, p. 873; Cairney 2018, p. 200). However, my focus on the practice of intergovernmental management is over much longer periods of institutional stability.

Finally, Kingdon is only interested in ideas from an institutionally Darwinian perspective; 'we focus on a more productive theoretical preoccupation' he writes; 'not on where ideas come from, but what makes them catch on and survive' (2003, p. 226). Again, from the point of view of federal dynamics' incorporation of an ideational layer, it is important to understand where ideas came from too; as Schmidt argues in her critique of multiple streams analysis from a discursive institutionalist perspective, ideas don't just float around waiting for policy windows to open; they may be opening because certain events or conditions are understood as an opportunity for change (including a reinstatement of stability) (2011, p. 108). Consequently, a major focus for my interviews was on understanding where and how officials developed their understanding of the federal system and its processes and opportunities for change, which called for the discursive methodology described in the next chapter.³¹

2.4 Chapter summary

In Chapter One, I set out the normative basis for my research, in the potential for changes to the way intergovernmental management is practiced in Australia to contribute to its federal system; essentially, fitting 'new chariot wheels' to the directions Australian federalism might

³¹ A similar critique of the notion of the 'hero entrepreneur' is made by critical realist theory that emphasises the importance of understanding how such entrepreneurs discover or develop their ideas (eg Leca & Naccache 2006).

take in the future.

Beginning with the proposition that understanding change in federal systems is intrinsically difficult, I have turned in this chapter to the theoretical handholds and footholds by which we might address that difficulty.

This research is predominantly based on the concept of federal dynamics as a systematic approach to understanding what changes within federal systems. I have noted two important research gaps that might constrain the application of federal dynamics theory to bureaucratic practices. The first is the tendency for research on federal dynamics to highlight the political aspects of intergovernmental relations, subsuming bureaucratic agency and capacity within that context. The second is the absence of a systematic tradition of research into intergovernmental management in Australia. The chapter has addressed the proposition that this research gap matters; that is, that this lack of research into intergovernmental management in Australia is not simply because this aspect of the federal system has little of interest for scholars of federalism and public administration.

The importance federal dynamics theory accords to the relationship between the institutional and ideational layers of the federal system also generates a research question about how this applies in Australia's case, and consequently what implications this might have for the practice of intergovernmental management.

I then linked the study of federal dynamics to broader research traditions in public administration, policy development and on federalism generally. A key theme arising from the interface between federal dynamics and those theoretical domains relates to the question of how individual agency relates to, is constrained by and depends upon the structures and processes of the federal system. Related issues canvassed in this chapter include the role of ideas and values in generating change or maintaining stability and institutional resilience, and congruent research on policy entrepreneurship.

A key issue in the theoretical interface between federal dynamics and policy-making is how the federal system's structures, processes and political culture affect the way policies are made and applied, at any point in time and over time. Accordingly, this chapter has explored the role played by bureaucratic relationships and processes in cross-jurisdictional policy formation, including how officials identify policy priorities and alternatives, and how and why policies change in response to these changing views. The chapter has also explored questions about

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when and how the boundaries on discretion in intergovernmental management are set, and how officials manage coordination and innovation in a federal environment characterised by policy and administrative complexity.

Finally, I distinguish between the traditional emphasis placed by federal dynamics theory on exogenous sources of change, as highlighted by historical institutionalism, and how the role of officials as change agents switches the focus to endogenous sources of change as they respond to institutional constraints. That shift introduces the discursive methodology discussed in the next chapter.

Chapter 3

Methodology and Data: a discursive institutionalist approach to intergovernmental management

The preceding chapter discussed the theoretical settings for this research in the study of federal dynamics. That body of research focuses both on the formal institutions and frameworks of federal systems, particularly constitutions and formal intergovernmental rules, and the informal processes and dynamics that make up much of the ‘real-life practice of administrators, policy-makers, groups and citizens’ (Colino 2010, p. 22).

As outlined in this chapter, the methodology adopted for this research approaches the practice of intergovernmental management from a discursive perspective in which officials are constrained, supported, informed and guided by prevalent discourses in federalism, policy and public administration. The strengths and risks of this methodology are canvassed, and alternative methodologies are briefly examined.

3.1 A discursive institutionalist methodology

3.1.1 The application of discursive analysis to federal dynamics

Much of the federal dynamic literature focuses on macroscopic systemic changes: constitutional change, judicial interpretation, formal intergovernmental agreements, fiscal federalism, delegation of powers from one level to the other, and asymmetry (Simeon 2001, p. 147ff). The methodology that accompanies such analysis typically adopts a historical institutionalist framework (eg see Broschek 2010, 2011a, 2011b, 2013) that sees federal dynamics characterised by path dependency and periods of equilibrium punctuated by critical junctures brought about by exogenous factors in ‘the economic, cultural, social, and global environment in which federalism is embedded’, embodied in a crisis or external shock where ‘citizens and leaders alike come to perceive that the institutions designed to serve them are failing to do so’ (Simeon 2001, p. 145). As noted in Chapter 2, this raises the question of why some institutions remain stable despite ‘massive’ periods of upheaval, and how gradual change may still take place despite apparent institutional equilibrium (Thelen & Karcher 2013, p. 118).

A second stream in the federal dynamics corpus relates to the endogenous sources of change arising from informal institutional processes and interactions that take place in federal systems, often in response to the formal constraints posed by constitutions, legislation and rules (Colino 2010, p. 22). Colino notes that ‘Bureaucrats and politicians have frequent interactions and

working relationships in the course of adopting and implementing policies. Actors develop informal strategies and norms within intergovernmental decision structures through administrative or partisan arenas or through personal contacts' (2010, p. 22). Accordingly, this stream focuses on change emanating from specific strategic decisions or policies adopted by concrete political actors at certain moments in time (Colino 2010, p. 18; Broschek 2013, p. 96). Such change is characterised by the incremental development of institutional components of the system.³² The associated methodology consequently adopts the incrementalist aspects of historical institutionalism that emerged in response to critiques of the methodological constraints of path dependency and punctuated equilibrium (Broschek 2013, p. 96).

At this point, however, a shortcoming arises in the capacity of the older forms of neo-institutionalism to deal with personal agency, because they posit institutions as structures external to agents, with rules set exogenously as constraints, whether as rationalist incentives, path-dependent trajectories or cultural norms. A focus on *bureaucratic* agency, in particular, goes beyond the mechanisms of change posited in the institutionalist tradition for the following reasons.

First, in line with its general adoption of a historical institutionalist lens, federal dynamics research subsumes bureaucratic agency and capacity within the general framework of collective political actors, occluding the bureaucracy's specific contribution and role. Second, federal dynamics places a priority on understanding how the institutional and ideational layers are related. How this works in Australia, and consequently what implications this might have for the practice of intergovernmental management, requires a methodology that is particularly responsive to the ideational component of federalism. Finally, Thelen and Karcher's question about the possibility of change despite (or even possibly leveraging) formal institutional stability raises similar questions about the role of ideational factors and their effect on federal institutions and processes in generating such change.

Accordingly, if we are to focus on individual practice and agency, explanation lies in the interaction between 'the consciousness of agents and the relevant strategic, *that is to a large extent discursive*, context' (Marsh 2010, p. 219 - my emphasis; Schmidt 2010, p. 14). Similarly, Wright considered 'the human dimension - the activities and attitudes of the persons

³² In the Australian case, Galligan similarly contrasted processes of punctuated equilibrium with those of incremental change, although he was writing about constitutional developments (2008, p. 621).

occupying official positions in the units of government under consideration' to be a defining feature of this system (1978, p. 9). In so doing he echoed Anderson's call for a focus on the human dimension of the federal system that I have already noted at Chapter 2.1.³³

Ostrom provides a good summary of what institutionalism in general offers to support a focus on agency. She defined institutions as "the shared concepts used by humans in repetitive situations organized by rules, norms, and strategies." (Schlager 1999, p. 308). How these concepts arise in a federal setting, how they relate to the 'formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity' (Hall & Taylor 1996, p. 938) and are then used in policy work, is precisely the problem of interest here.

More broadly, Schmidt's four elements of discursive institutionalism are particularly apposite for the study of intergovernmental management: in the discursive framework, ideas and discourse 'are taken seriously'; they are set in an institutional context with one or more of the older forms of institutionalism as background; discourse follows a 'logic of communication'; and discursive institutionalism takes 'a more dynamic view of change, in which ideas and discourse overcome obstacles' that the older institutionalisms posit as insurmountable (or at least take as a given set of constraints on agency).³⁴ As Schmidt argues, 'institutions are internal to sentient agents, serving both as structures (of thinking and acting) that constrain action and as constructs (of thinking and acting) created and changed by those actors' (2008, p. 304; 2010, p. 14).

Over the past decade, a burgeoning body of work in discursive institutionalism has illuminated and explained major processes of policy change.³⁵ A number of these studies have looked at these policies in a federal setting, including multi-level governance studies of the Eurozone (Schmidt, 2017a) and EU trade policy (De Ville & Orbie, 2014). However, there has been very

³³ In a similar vein, Burgess notes that 'change and development remain the most difficult aspects to explain and understand in the study of federal political systems' and suggests that 'the notion of federalism as political ideology can provide a useful route into this complicated area' (1993, p.107).

³⁴ I would briefly note here the congruence between the notions of 'discourse' and 'ideas', with ideational approaches, in Carstensen's formulation, being 'less reluctant' to focus on strategic, actor-oriented change in policy processes (2011, pp.603-604).

³⁵ Including environmental and climate policy (Gillard, 2016; Hajer & Versteeg, 2005; Leipold, 2014; Lorenzoni & Benson, 2014; Mert, 2009); domestic and multinational economic policy (De Ville & Orbie, 2014; Hope & Raudla, 2012; Schmidt, 2017a); transport (Palmer, 2010); housing (Jacobs, Kemeny, & Manzi, 2003); drugs (Lancaster & Ritter, 2014); immigration (Boswell & Hampshire, 2016) and even Brexit and Trump's election (Schmidt, 2017b).

little application of a discursive lens to federal dynamics in particular, or even of federalism generally (Borriello's & Crespy's study (2015) of French and German approaches to EU integration is an interesting exception). I have not identified any discursive institutionalist studies thus far of intergovernmental management.³⁶

In their cross-country study of trends and dynamics in intergovernmental financial relations, Eccleston et al. conclude that 'an 'actor-centred' institutionalism approach will provide rich insights into the path ways to federal reform', but note that more research is needed to understand how actors exercise their agency in interpreting the political and institutional context and constructing strategies for change (2016, p. 13). In her work on EU public policy, Saurugger argues similarly for an 'actor-centred constructivism' to help conceptualise institutional complexity (2013, p. 901).

A discursive methodology is also particularly relevant for examining the subset of issues on institutional resilience introduced in Chapter 2. Institutional stability may be the product of path dependency; however, as we have seen, stability may not deliver institutional resilience. The interviews illustrated the choice many officials face in intergovernmental management between stasis and a more active form of institutional maintenance, requiring them to take steps to maintain networks and policy productivity where they perceive these are becoming degraded. Such choices are patterned by the 'rules-in-use' which, as I have suggested, are the focus of the discursive approach adopted here.

Accordingly, this research aims to contribute both to our insights into federal dynamics, and on the methodological front to the development of discursive institutionalism through its application to, and testing in, a comparatively new field for the framework.

3.1.2 Discursive content and process

Discursive institutionalism is interested in the content of ideas, but also in the way ideas are communicated and exchanged as a stimulus for political change (Schmidt 2010, pp. 2-3).

Discursive practices are informed by ideas at the systemic and cross-jurisdictional level, down to organisational and even sub-organisational levels, generating what Hajer calls 'communicative networks among actors with different or at best overlapping perceptions and understandings'. The way such networks operate, and the content of their frameworks and

³⁶ In correspondence with me, Professor Schmidt confirmed that she 'had not seen a piece on DI focused on intergovernmental relations in a federal system per se' (correspondence dated 23/2/17)

outputs, are ‘the prime vehicles of change’ in the multi-jurisdictional governance frameworks of interest to my research (Hajer 1995, p. 63) and form the basis of the findings detailed in Chapters 4 and 5. For example, the networks discussed in Chapter 5 illustrate Hajer’s notion of ‘discourse coalitions’ as particular communicative networks bound by a common set of ‘story lines’ and acting on that understanding (1995, p. 58ff.).

The federal system offers a fruitful and varied set of discourses for examination, and consequently the different *forms* such discursive content and discursive practice can take, and the interplay between them, are a useful element in the discursive methodology employed here.

Discursive institutionalism sees federal structures as embodiments of ideas which, in Blyth’s terms, ‘give substance to interests and determine the form and content of new institutions’ (as discussed in Bell 2011, p. 887). Federalism as an ‘idea’ is more than just a set of constitutional, legal and political structures and processes that determine the interests and motives of the political and bureaucratic actors within it; it is, in Hay’s terms, an ‘irredeemably ideational’ environment (2011, p. 67) in which ideas and discourses are an engine of change during periods of *both* uncertainty and crisis (eg Blyth, 2002) and stability (eg Carstensen, 2011).

Discourse as content and as process operates at different levels of generality and influence that Schmidt categorises as ‘policies, programs, and philosophies’ (2008, p. 306). These help explain one of the key themes emerging from my interviews, the way public servants draw from higher-level federal perspectives and narratives, and the policies and programs these generate (‘states’ rights’, ‘subsidiarity’, ‘harmonisation’, ‘cooperative federalism’ and so on). They then apply these to specific policy processes using ‘paradigms that reflect underlying assumptions or organizing principles’ (Schmidt 2008, p. 306). These policy solutions correspond closely to the ideational strategies adopted by actors in a federal dynamics framework.

It is also important to note that, as potential areas for the exercise of agency, policy ideas are more labile, or at least open to change, than programmatic ideas, and both policy and program ideas change more rapidly than the more fundamental philosophies from which they emerge (Schmidt 2011, p. 108). Some of these ideas operate at Schmidt’s higher ‘philosophical’ level and some at lower programmatic and policy levels, allowing us to see individual agency working differently and with wider or narrow possibilities at these different levels. For example, Deem et al. find that public servants make a clear distinction between their view of

subsidiarity in principle (corresponding to a ‘philosophical’ paradigm in Schmidt’s terms), and their more practical concerns and approaches when thinking about particular policy problems (2015, p. 432). At the meso-level and particularly at the issue-based policy levels, the potential for agency is at its widest and hence the possibilities for change are also most apparent.

My approach has therefore been to examine how these discursive levels are reflected in the way the interviewees understand their roles and are guided by norms and values that are not uni-dimensional but require choices to be made amongst them (such choices themselves representing a form of agency).

Discursive institutionalists also distinguish *coordinative* discourse, between ‘individuals and groups at the center of policy construction who are involved in the creation, elaboration, and justification of policy and programmatic ideas... on the basis of shared cognitive and normative ideas about a common policy enterprise’ from *communicative* discourse, a political process involving ‘the presentation, deliberation, and legitimation of political ideas to the general public’ (Schmidt 2008, p. 310). Again, such differences generate a potential space for the exercise of agency where different governments adopt different ‘communicative discourses’, or different coordinative and communicative discourses, requiring a ‘discursive space’ in which to sort this out.

Differentiating between these discursive forms and levels suggests one approach to the problem of change occurring in federal systems despite apparent systemic stability. Different rates of change are recognised at different levels of the ideational layer, suggesting at least the possibility of a systemic capability for incremental improvement and individual creativity, even if overall change in the federal system is glacial and highly exposed to political interests and dynamics.³⁷ As illustrated in the findings that follow, change occurs as individuals engaged in intergovernmental management generate cognitive and normative ideas about their work that are disseminated and guide the work of others; or, in terms of content, where different elements are added to existing ideas, ‘thereby bringing about change in ideas incrementally even in times of stability, and not just at critical junctures during ‘paradigm’ shifts’ (Schmidt 2010, p. 14).

³⁷ For example, Schmidt (2017a, p. 460) argues that rapidly changing policy ideas in the Eurozone crisis ‘demonstrate the creativity of agents’ ideas, beyond what might have been expected within the context of long-accepted frames and paradigms, let alone the deeper, slowly evolving philosophical ideas’.

3.2 Methodology and data

3.2.1 Research method

The research methodology focuses on elite interviews, as these are used ‘whenever it is appropriate to treat a respondent as an expert about the topic at hand’ (Leech 2002, p. 663) and there is a need to move beyond the official recorded version of events in order to understand the underlying context and its role in guiding participants’ actions (Tansey 2007, p. 8).³⁸

At the heart of the question of agency are the informal ‘rules-in-use’ in the practice of intergovernmental management, the ‘distinctive ensemble of dos and don’ts that one learns on the ground’ (Ostrom, cited in Lowndes & Pratchett 2005, p. 10). In other words, these rules are specifically distinguished from the ‘rules-in-form’ that are formally constructed and written down, such as constitutional clauses, intergovernmental agreements or the general framework of policies and regulations that govern the public sector (eg see Lowndes & Roberts 2013, p. 53).

It is how, where, when and why these rules-in-use are applied that helps us to understand how agency arises, is configured by and works with the structures and processes of federalism. As March and Olsen put it in their defining work on institutionalism, ‘describing behavior as rule following is only the first step in understanding how rules affect behavior’. They point to a panoply of actions and constructions by which a logic of appropriateness is implemented in the face of conflict and ambiguity (March & Olsen 2009b, p. 694) — conflict and ambiguity being very much characteristics of intergovernmental relations in a federal system. Agency in intergovernmental management is, therefore, about public servants asking themselves the following kinds of questions March and Olsen raise: what kind of a situation is this? Who am I? How appropriate are different actions for me in this situation? What is most appropriate?

Rules-in-use also reflect a ‘logic of consequentiality’, in terms of how they guide a choice among potential outcomes in terms of one’s values or goals, whether they be personal, organisational, or programmatic.

A key focus for the interviews was the nature of the relationship between these two logics, their relative importance in different settings, how public servants assess their options against each

³⁸ See Littig (2009) for a discussion of the commonalities and differences in the respective traditions of interviewing experts in German-speaking countries, and of interviewing elites in Anglo-American countries. Interestingly, this corresponds to the practices in the former that are tied to the logic of appropriateness, while practice in the latter is tied to the logic of consequences (March & Olsen 2009b, p. 701).

set of criteria and what resources each requires.

The interviews aimed to get practitioners to reflect on those questions, and to ask, in relation to intergovernmental management practices, ‘how are things done around here?’ and ‘why did you do this and not that?’ (Lowndes & Pratchett 2005, p. 8; Rhodes 2016, p. 645). As Ostrom explains: ‘In settings where the rules-in-use have evolved over long periods of time and are understood implicitly by participants, obtaining information about rules-in-use requires spending time at a site and learning how to ask nonthreatening, context-specific questions about rule configurations’ (Ostrom 2011, p. 21).

Or, as a state government department head put it more succinctly,

If there is no manual for the federation, then there is no professional development program related to the manual for the federation. It is very much on the job and it’s l-o-r-e, not l-a-w. (Interview 18, State central department)

The interviews served as primary ‘texts’ for identifying the way practitioners construed the intergovernmental policy and public administration problems to be solved; how in collaboration, or at least communication with other actors, they applied discourses operating in the federal system generally, and within the particular policy fields in which they working, to identify and pursue what they saw as appropriate courses of action; the practices and strategies they devised and applied; and how they evaluated the outcomes of those decisions.

As an illustration of the complexity of these issues and ideas, **Figure 3** provides an example, taken at random, from the coding of one interview. The bars to the right of the text represent themes and ideas to which codes were allocated, on the basis of their relevance to the research (the coding process is discussed further in the next section). The ideas contained in the text, as highlighted by these coding bars, are overlapping, numerous and concentrated, suggesting that particular ideas are a product of more than one narrative or level of discourse, and may contain intrinsic tensions and balances. What officials said and how they said it, in terms of the complex, interwoven ideas, values and terminologies they traverse, provided a direct insight into the research questions and issues, in words and voices the following chapters bring to the fore.

3.2.2 Selection of interviewees

It was axiomatic that more senior public servants will have more organisational and institutional resources at their disposal and hence more personal agency, potential or actual.

[illegible]

A second criterion in the vertical axis of selection related to whether the interviewee worked for a central or a line department (with agencies such as Environment Protection Agencies included in the latter, although the distinction between line departments and statutory

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authorities is examined in detail in section 4.5.2). This sampling balanced the greater attention paid to central departments in the literature to date, as discussed in Chapter 2 above, and allowed a number of propositions to be explored around the comparative levels of agency exercised by officials working in central as opposed to line departments and agencies. Issues here included whether officials in central agencies had greater scope for their personal initiative because of the influence central agencies wield, and because they had access to jurisdiction-wide perspectives and strategies. The research also tested the extent to which officials in central agencies across the Commonwealth-state divide might make common cause against their respective colleagues in line departments (Harwood & Phillimore 2012, p. 7; Botterill 2007, p. 195; cf Inwood et al. 2011, p. 68 for the Canadian example of this issue).

A total of 42 interviewees ultimately formed the interview sample. A summary of the jurisdictional distribution of interviewees is at **Table 1**. A de-identified list of interviewees, including details on their seniority, department type and policy specialisation is provided at **Appendix 3**.

In addition, four retired officials who had been very senior in their respective jurisdictions were interviewed to test the propositions coming forward in the main interview data. Where appropriate, I have included some of their comments in the empirical findings below.

Table 1: Interviewees by jurisdiction and agency type

Jurisdiction		Central departments	Line departments and statutory agencies	Totals
	Commonwealth	3	8	11
	NSW	4	5	9
	Vic	3	7	10
	SA	2	6	8
	Territories	2	2	4
	States & Territories	11	20	31
	Total	14	28	42

The interviews were generally an hour long. Interviewees were provided with an indicative questionnaire beforehand to encourage them to reflect on the issues that would be explored at

the interview (**Appendix 2**). After the interviews, they were given a copy of the transcripts to provide any additional comments or clarify matters they felt had not come through clearly.

Remarkably, all but two of the 33 interviewees who provided information on the length of time they had been working on intergovernmental management had done so for more than 5 years; just over half of them for more than 10 years (with no difference between the Commonwealth and states in this regard). In other words, longevity and specialisation in the role is a characteristic of intergovernmental managers generally, and this particular cohort of interviewees was typical in this regard.

The contribution mobility provides for the establishment of networks and the development of interpersonal trust was discussed in the conclusions to Chapter 5. In terms of their mobility across jurisdictions, 16 of the 29 interviewees who provided information on how many jurisdictions they had worked for at any level reported working for more than one; in other words, an important part of their specialisation in intergovernmental management had probably been developed through working for more than one government. Of that group, 13 had done so by working for both the Commonwealth and a state or territory government.

3.3 Data coding

The interviews were coded using NVivo software (2015) around Lynn's tripartite framework for public management, comprising 'structures', 'craft' and 'institutions' (2006). 'Structures' were further divided into formal and informal elements of the federal system. Coding around 'craft' included the more quotidian concerns of the practices of intergovernmental management, detailed further in Chapter 5.

Within these broad dimensions, coding was applied to the interviewees' ideas, values, assumptions and perceptions about the federal system, and the appropriate role of government and bureaucracy in that framework.

As the coding progressed, additional codes were added, based on what the interviewees themselves were saying that appeared again and again across the interviews, eventually forming a framework of themes for the findings presented and discussed in subsequent chapters (these are listed at **Appendix 4**).

These additional themes included how officials thought about particular policy problems; their ideas about which policy ends and objectives should be pursued; and about the appropriate

policy ‘means’ to achieve those ends.

Discursive analytical techniques were used to identify the prevailing discourses themselves, particularly as they divided into the three levels at which they operate posited by Schmidt (2008). Coding encompassed conflicts between discourses as noted by the interviewees themselves, and for discourse-related practices such as consciously crafting and disseminating discursive content.

Finally, an important part of the coding effort was applied to the particular examples and narratives interviewees supplied of where and how they had personally developed and implemented strategies in their work.

3.4 Methodological limitations and caveats

‘There is nothing inevitable about discourse’ as Schmidt argues succinctly; it can exert a causal influence on policy change, but may at other times simply reflect the interests of key stakeholders or echo institutional path dependencies (2002, p. 169).

Using a discursive methodology therefore has a number of limitations and associated caveats related to this research.

First, discursive institutionalism has been criticised for downplaying, or completely eliding the role of agency in allowing actors to choose between strategies and ideas rather than simply somehow absorbing them from the surrounding institutional settings.⁴⁰

The opposite critique is that discursive institutionalism *over*plays, rather than downplays, the role of agency, by focusing too much on the transformative power of the ideas that individual agents have and use and not enough on the immediate or wider social and political structures which shape and channel agents’ powers. As a result, discursive institutionalism fails to pay sufficient attention to where such ideas come from, and how they possess an intersubjective, structural quality derived from material and objective interests (for example, Larsson 2015, p. 191). Indeed, Schmidt acknowledged that discursive institutionalism can ‘go wrong’ when it fails to pay sufficient attention to the issues of power and position and the way institutions and cultural frameworks affect how ideas are expressed and where they come from (Schmidt

⁴⁰ For example, Checkel warned that ‘Without more sustained attention to agency, [constructivist] scholars will find themselves unable to explain where their powerful social structures (norms) come from in the first place and, equally important, why and how they change over time’ (1998, p. 339; see also Carstensen 2011). This question about the causal mechanism of change is, of course, of primary interest for federal dynamics.

2010, p.21).

A related critique might therefore be that the methodology adopted here has failed to harness the insights from other forms of new institutionalism, or other theories more generally, to flesh out the structure/agency relationship. Rational choice theory, in particular, might contribute insights into the bargaining behaviours and strategies adopted by officials in the course of their work.

As Blyth puts it in his critique of rational choice theory, however, ‘structures do not come with an instruction sheet’: specifying interests, and hence what people do, is less about *a priori* structural determination and more about the construction of wants as mediated by beliefs and desires (i.e., ideas) (2003, p. 697). The meaning and ramifications of structural dynamics need to be worked out “on the ground” by the agents in question. Consequently, while structures are significant, their account of interests or preferences is incomplete and, in understanding intergovernmental management, ‘what government policymakers actually think and the inter-subjective contexts in which they operate is a crucial part of the equation’ (Bell 2012, p. 665). As the data from the interviews makes clear, officials are not asking themselves ‘what are my interests?’ (or at least, only asking that as a very minor part of their overall calculus), but rather ‘what is my role in this system and how am I expected to behave in circumstances such as this?’ (representing, in theoretical terms, the difference between a logic of consequence and a logic of appropriateness [March & Olsen 2009b, p.701]).

As noted in Chapter 1, federalism is not a static set of institutions but a process. Consequently, a further problem with rational choice theory is its failure to deal with the temporal dimension, whereby systemic changes over time might change the relevant actors’ interest calculus (Bell 2002, p.478).

Finally, a substantial proportion of interviewees specifically mentioned the importance of trust as a form of social capital in intergovernmental management. There is a question about the extent to which rational choice theory can help us to understand the role trust and other collaborative values might play in shaping behaviour, particularly in the settings of the Westminster system.⁴¹

⁴¹ Thus, Zey argues ‘trust itself is a relationship between individuals, and cannot be presupposed without violating the tenets of rational choice theory’ (1992, p.18). It is telling that there appears to be very little interpretive content

Responding to the risks of either under or overplaying the role of individual agency requires showing ‘empirically how, when, where, and why ideas and discourse matter for institutional change, and when they do not’ (Schmidt 2010, p. 21); in other words, the task is to show how the institution of federalism has both constraining and enabling effects, limiting some forms of agency and enhancing other forms. Accordingly, the methodology adopted here gets down to a level where we can examine *both* how agents deal with and are embedded within what Bell calls an ideational realm, while *also* showing ‘how such agents shape and in turn are shaped by wider institutional and structural environments’ (Bell 2012, p. 666).

A second issue arises from the risk that ‘bottom up’ findings are too idiosyncratic to allow for generalisation, let alone add to the theoretical underpinnings of either federal dynamics or discursive institutionalism (Eisenhardt 1989, p. 547). A related criticism, particularly from a historical institutionalist perspective, might be that this research is a snapshot of a particular set of federal institutional dynamics at this time.

There are two points that might be made in response to such critiques. The first is that if the system only changes incrementally it is likely that the factors affecting agency will change incrementally as well. Second, and more broadly, adopting a discursive institutionalist methodology does not preclude an analysis of significant systemic developments over time; indeed, by making discourses themselves a focus of study we may have a window onto change that other methodologies deny us. As the authors of a recent study of European integration have argued

while part of leader’s discourse is inherited from history and national political cultures, thus entailing a path dependent logic, discourse is also strategically used by political actors in order to reconfigure their interests and can thus explain institutional and policy change (Borriello & Crespy 2015, p. 506).

A third methodological critique points to the risk of post-hoc rationalisation by the actors, given the complexities of the issues and situations they were confronting (Mikecz 2012, p. 491). Interviewing very senior officials in their capacity as experts on intergovernmental management has both benefits and risks. With over one-third of interviewees being either the head or deputy head of their organisation, and all but a handful of interviewees in the senior executive services of their respective jurisdictions, they have a systemic perspective on and

in the vast rational choice literature being produced, suggesting that, *pace* the counterarguments provided here, there is as yet little co-contribution between rational choice and interpretive social theory (Hampsher-Monk & Hindmoor 2010, p. 50).

role in the federation's forums and councils that their subordinates do not. On the other hand, one runs the risk of defensive, *post-hoc* justifications for their actions, suggesting causes and effects that a more objective analysis might not.

On balance, the methodology was predicated on the expectation that interviewees would be able to articulate complex notions about federalism and the federal system, and would have thought long and hard about the issues I wanted to explore.

The standard correction for this issue through comparison with some objective set of data is not available in this research. Accordingly, the alternative approach of triangulating the views expressed has been adopted, by making a detailed comparison of interview transcripts as they have focused on closely related meetings, events or particular policy developments. This has generated comments and views from a number of perspectives to glean meanings that do not rest on any individual perspective (Rhodes, t'Hart & Noordegraaf 2007, p. 221).

Even where some conversion of *ad hoc* to *post hoc* strategy-making has taken place, the resulting rationalisation has its own interest, as it may inform and constrain subsequent decisions through its internal logic or path-dependent interest calculus.

Despite the limitations of a point-in-time, small-*n* study, its conclusions might serve as a motivation and justification for further research in this field. Some suggestions in that direction are provided in the final chapter of this thesis.

3.5 Chapter summary

Chapter 2 emphasized the need to understand how the interaction between the structural and ideational aspects of federal dynamics affects the practice of intergovernmental management. This chapter has detailed why a discursive institutionalist methodology was adopted with that aim in mind, and how it was applied. This approach broadens the application of discursive institutionalism as a methodology, given the limited extent to which it has been applied to federalism itself.

The following chapter now begins an analysis of the data, in line with the framework for data analysis outlined in Chapter 1.

Chapter 4

‘He does know we’ve got red lines, doesn’t he?’ The formal institutional frameworks of Australian federalism

4.1 Introduction

I now turn to the empirical findings on the sources and processes of change and stability in the Australian federation, in so far as they relate to the practice of intergovernmental management. This chapter’s focus is on federalism’s ‘institutional layer’, the ‘formal institutions and informal routines that establish authority relationships among territorially defined political entities’ (Benz & Broschek 2013, p. 6). In terms of bureaucratic practice this institutional layer corresponds with governance structures whose design Lynn identifies as ‘the paradigmatic problem of public management’ (2012, p. 21).

Before analysing the interviewees’ perceptions of the values, norms and interests at play in the federal system and how these affect their practice, it is important to consider how such views reflect key developments in the federal context. Whether explicitly or implicitly, these settings, and the way they change, are of fundamental importance to collective and individual decision making: who gets to make decisions, how power is allocated to make decisions, on what basis decisions are made, and how decision-making takes place in intergovernmental settings. The data examined here comes closest to the notion of ‘interests’ as the motivations for individual officials’ strategies, as these interests play out across individual, departmental, jurisdictional and national factors. These issues are front-of-mind for the interviewees whose views are analysed below; consequently, they are an important factor in understanding why or how intergovernmental management affects the federal system.

The establishment of formal and informal councils, committees and conferences are common to all federations as ways of managing ‘the changing scope, character and varied dimensions of interdependence among governments’ (Watts 2003, p. 4).

The interviews were particularly focused on the effect that changes in federal structures, such as changes to the ministerial councils, have on intergovernmental management; whether, for example, this frees up innovation, or makes it harder to get things done, and consequently how managers react to such changes. This was an opportunity to consider whether such changes to the way they worked reflected the modes of incremental change (layering, conversion and so on) identified by historical institutionalists. Given the longevity most of the interviewees had

in the intergovernmental space, this was an issue they were able to explore in detail.

If the ministerial councils and their sub-committees are the skeleton of the federal system, the inter-government agreements are its nervous system. National agreements and national partnership agreements set out objectives, outcomes, outputs and performance indicators, particularly for the transmission of funds between the federal and state governments, and clarify the roles and responsibilities that guide the federal and state governments in the delivery of services in key sectors and the management of their performance. The governance of these agreements is one of the key responsibilities in intergovernmental management, particularly for central agencies, many of whom have specialised and highly experienced units to deal with this matter, whereas policy areas in line departments are only intermittently involved in negotiating agreements in their policy field.

A third formal element in the federal structure comprises the departments and agencies in which officials work, and how those organisational elements affect their role. Issues identified here include the dynamics of the relationships between central and line departments and agencies and their impact on intergovernmental management. Inwood et al. note an important distinction between intergovernmental officials working in central agencies and those working in intergovernmental units within line departments. They found that, while the former are strongly process-oriented, the latter come from more policy-oriented positions within their respective sectors (Inwood et al. 2002, p. 258).

4.2 The Council of Australian Governments (COAG)

4.2.1 Background

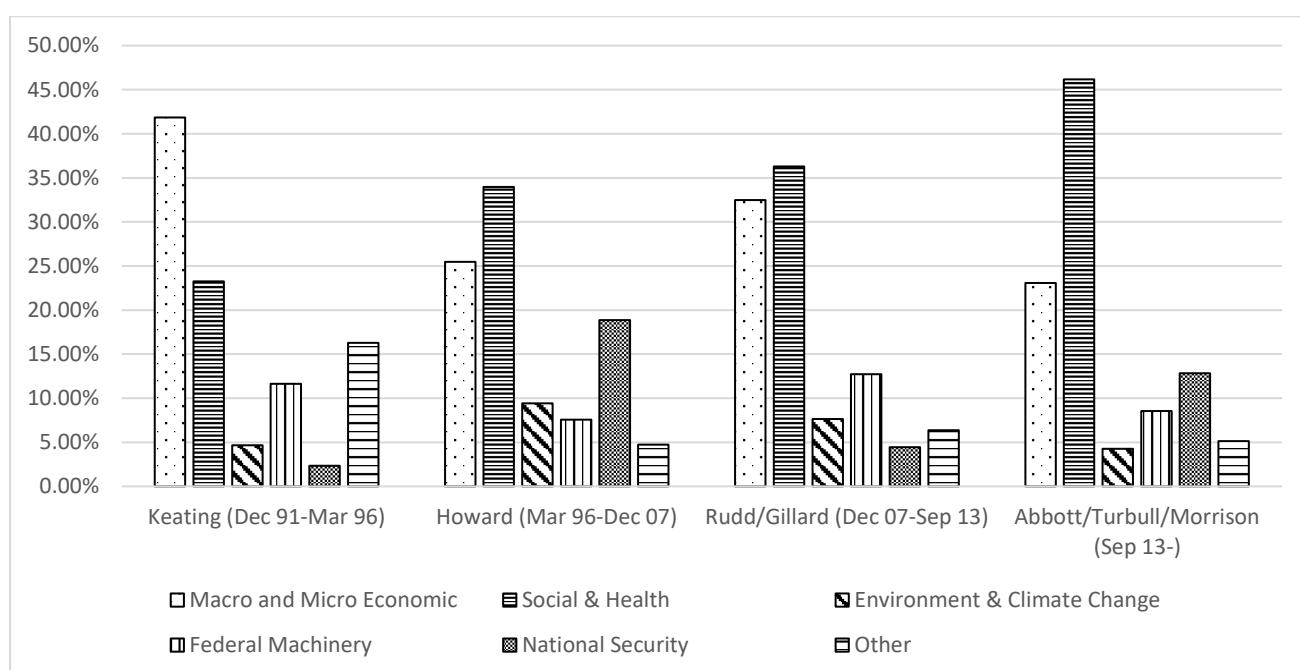
COAG was set up in 1992 with a deliberate and enunciated focus on intergovernmental cooperation, as distinct from its predecessors (Painter 1996; Keating & Wanna 2000). In contrast with the tight deadlines and unequal participation of the financial premiers' conferences that preceded them, COAG's meetings involve considerable cooperative behind-the-scenes preparation and negotiation, which form a principal arena for the bureaucratic practices examined here.

COAG's focus is pre-eminently on the coordination of national policy reform and responding to urgent matters of public importance (Menzies 2012a, p. 2).⁴² As **Figure 4** indicates, the

⁴² This doesn't mean, however, that the pace of change is always maintained; one Liberal Premier complained COAG had become a 'parking lot for tough decisions' under the Rudd Government (Williams & Kildea 2011).

major focus of COAG’s activity since its establishment has been on national economic and social reform. Two-thirds of the 423 individual policy announcements in COAG’s communiques between December 1992 and December 2018 relate to social and health policies and macro or microeconomic reform, deregulation and infrastructure development; the remainder of COAG’s announcements are divided between matters relating to federal machinery, such as reviews of the ministerial council system and fiscal federalism; national security; the environment and climate change, and individual issues that span a number of the other categories (for example, the development of a national population and planning framework) or are one-off items (Australia’s bid for the World Cup).

Figure 4. COAG Communique items by policy area



Source: Author analysis of Council of Australian Governments communiques

COAG has seldom considered issues that touch on the constitutional allocation of responsibilities and proposals for reform that go beyond instrumental improvements to the existing federal system. On only ten occasions since its establishment have matters come before it that had the potential to do so; these are itemised at **Table 2**. With the exception of the IGA FFR, all simply slipped off the radar without an outcome. Consequently, despite Australia’s extensive system of intergovernmental relations, Fenna and Phillimore argue that ‘with COAG there is much less than meets the eye. COAG is not an ‘institution’ in any meaningful sense of the word...COAG is not really something that exists, but merely

something that happens' (Fenna & Phillimore 2015, p. 55).⁴³

In short, COAG is, first and foremost, a mechanism for policy change, but not a mechanism for changing the federal system overall, other than through incremental developments in individual policy areas. COAG's communiques are prosaic, couched in terms of a work agenda rather than the principles of the federal compact; they are couched in terms of work 'noted', 'progress reported', 'a working group of Commonwealth, State and Territory officials to be established', and so on. Although the communiques may refer to previous work, there is no process for ascertaining or evaluating whether previous commitments have been made or — whether by design or omission — failed to be implemented in part or in full. Consequently, there is a degree of cynicism about these processes and their outputs; this state official's view was typical:

There's always a communique, and when you get a bunch of ministers together, they want to be seen to be effective at making decisions. So the whole bureaucratic machine that sits beneath that actually works and it aligns itself to make sure that things happen. (Interview 14, State line agency)

Figure 4 also illustrates how COAG's priorities shift to reflect those of incumbent federal governments. The priority given by the Hawke and Keating governments to economic reform has not been maintained to the same extent by subsequent governments; indeed, over roughly the same number of years, the earlier Labor priority on economic over social policies has been reversed by the current Coalition incumbents, such that the Coalition governments of the past five years have given a lower priority to economic reform than all their predecessors in the COAG era, at least in terms of COAG's agenda. There has also been a decline in COAG's prioritisation of environment and climate change policies, and the emergence, particularly under Howard, of national security as a major preoccupation.

Much of COAG's work is aimed at establishing nationally consistent and occasionally uniform systems, through legislation, regulation, national standards, model clauses and harmonisation frameworks. While it is impossible to conceive of a functioning economy today without such effort, the countervailing task before officials is to avoid unduly constraining the states'

⁴³ An earlier discussion of COAG by Agranoff similarly argued that COAG focused on primarily non-financial matters, and so was a forum for dealing with long term issues involving matters that clearly involved state government responsibilities, 'where norms of cooperation prevail over those of competition and/or conflict' (2007, p. 264). While that may have been the case at the time, the Commonwealth's involvement in such policies since, and its move away from the IGA FFR's aspirations would suggest the distinction Agranoff draws between norms is less clear today.

capacity for the very diversity and innovation that is needed to deal with new challenges through 'competitive federalism' (Kildea & Lynch, 2011). Consequently, the federal system’s ability to balance national interests and objectives with state, regional and local needs, approaches and preferences — what Bednar refers to as ‘the control dial of federalism’ (Bednar, 2014) — and *how* the system negotiates that balance is an important focus for how intergovernmental managers negotiate objectives and interests.

Table 2: COAG meetings considering federal reform

COAG Meeting	Communique Item	Outcome
June 1993	Commonwealth-state roles and responsibilities	The Council agreed to establish a Working Group to identify those functional areas which exhibit inefficiencies in existing intergovernmental arrangements and where there is scope for clarification of the roles and responsibilities
February 1994	Commonwealth-state roles and responsibilities	The Council did not have the opportunity to conclude its consideration of the report from the Working Group; it is deferred until the August meeting, and the Working Group is given a continuing role in monitoring and assessing current reviews, and in considering areas for possible future reviews. However, no further reports from the Working Group are recorded
March 2008	Commonwealth-state financial arrangements	COAG agreed on the key elements of a new Intergovernmental Agreement on Commonwealth-State financial arrangements, to be finalised by the end of 2008 following work to settle outputs, outcomes, reforms, performance indicators and funding arrangements.
July 2008	Commonwealth-state financial arrangements	COAG noted the preliminary Statements of Objectives, Outcomes, Outputs and Performance Measures for the new funding agreements
November 2008	Commonwealth-state financial arrangements	IGA FFR agreed; new funding for specific purpose payments and National Partnership payments

COAG Meeting	Communique Item	Outcome
May 2014	White Papers on the Reform of the Federation and Taxation Reform	COAG considered draft Terms of Reference and establishes a Steering Committee to oversee the development of the Federation White Paper
October 2014	White Papers on the Reform of the Federation and Taxation Reform	COAG resolves to conduct a wide-ranging review in a spirit of partnership in order to achieve consensus as far as possible on reform directions
April 2015	White Papers on the Reform of the Federation and Taxation Reform	Statement of principles: COAG agrees that federation reform will need the states, territories and Commonwealth to work together to meaningfully address long-term funding pressures and also look at structural reforms to ensure services can be delivered in the most efficient way
December 2015	Northern Territory statehood	Foreshadows a report by NT Chief Minister on progress towards statehood
April 2016	Northern Territory statehood	Foreshadows a proposal to the next COAG meeting (did not eventuate)

Source: COAG meeting communiques

How this balance plays out in COAG's shifting priorities represents both a tangible driver for individual strategies and a constraint on them, as organisational and jurisdictional priorities shift in line with national and sub-national political directions. The extent to which such priorities drive and constrain intergovernmental management was therefore a key question the interviews explored.

4.2.2 The norms and conventions of COAG meetings

A number of officials drew attention to COAG's pre-eminence as key to shaping intergovernmental relations.

I think the economic and fiscal context is really important to understanding the different types of conversations that happen, particularly at COAG. COAG conversations really set the agenda for all Commonwealth-state interactions. So in most respects, ministerial councils and the officials' structures that serve them get their mandate from COAG. (Interview 17, State central department).

The Commonwealth's formal role in convening and chairing COAG meetings and finalising its agenda is reflected in a culture that appears to leave little room for sub-national initiatives in agenda formation and policy development. Even state officials commented on the states'

passivity, ‘waiting for the Commonwealth to lead’ as one of them put it (Interview 10, State central department).

Part of the top down dynamic here appears to be the absence of an alternative forum or process. Although the Council for the Australian Federation (CAF) was established in 2006 as an alternative to COAG for state and territory first ministers only, it has met sporadically and has not lived up to initial hopes that it would drive alternative policy prioritisation and policy development (Weissert 2017, p. 96).⁴⁴ The few officials I interviewed who actually mentioned CAF dismissed it as largely irrelevant and tending to operate only in response to rare national initiatives such as the federation review. If anything, officials felt there was a disincentive for politicians or officials at the sub-national level to take the lead on big federal policy matters.

There’s no particular interest in taking a forward position on federal issues here in Victoria. Mike Baird did so in New South Wales, particularly on the GST, and he got kicked in the head, as did Jay Weatherill. (Retired senior official, Interview 3)

An important corollary of this powerful, centripetal policy dynamic around COAG is the tendency for central agencies to dominate the policy making process (as noted, for example, by Kildea & Lynch 2011, p. 116). Only the heads of central agencies attend the Senior Officials Meeting (SOM) and Deputy SOM that take place around COAG. These meetings have a distinct dynamic that is driven by the Commonwealth:

At COAG SOM the Commonwealth has always got a sense of what the Prime Minister wants achieved; so, too, have the states and territories. Sometimes there’s a need to develop new ideas. Sometimes there’s a need to find a negotiated settlement. Sometimes there’s a need to squabble over how much money is going to be spent by both sides with what protections. (Retired senior official, Interview 3)

This can put the states at a disadvantage; their central agencies often lack the technical knowledge to provide much input or even push back when items come onto the agenda that they are not prepared to support. Consequently, an important aim for state officials is to reengineer such processes, in order to have more input on the nature of a policy problem and its solution:

to start earlier in our conversations with the Commonwealth and agree on where we can work effectively together to solve a particular problem rather than grappling with a model that’s been lumped upon us. It’s kind of a solution in search of a not very well articulated problem and not an agreed problem. Two weeks out there’s a new idea put on the table and it’s not been agreed

⁴⁴ CAF’s occasional communiques replicate COAG’s agenda items, presenting the Premiers’ views on the latter, rather than enunciating and communicating alternative policy agendas, priorities and directions.

that there's a problem (Interview 16, State line department).

Equally, central agency officials complain that the intense focus on upcoming COAG agendas prevents them from developing an in-depth understanding of the relevant policy fields, particularly when it comes to identifying best practice. Most state central agencies have developed tight communication arrangements with their line departments to ensure their state's interests are not undermined by this lack of in-depth knowledge on their part. This has important ramifications for the differing interests of central and line departments (see section 4.5.1).

While this divergence has been a long-standing focus of research into Australian federalism, the data here suggests that overarching jurisdictional interests for both central and line agencies are often greater than the policy divide between them.

Often we get accused in COAG from the line agencies' perspective of being a bit detached from service delivery directly and things we agree to have downstream effects. So we take really seriously the need to make sure we test with the line agencies whether there are going to be any unintended consequences or concerns about things we agree at COAG. (Interview 19, State central department)

Another important aspect of COAG's dominance by the central agencies noted by interviewees has been the erosion of standardised, consistent practices for the development and negotiation of intergovernmental agreements. This erosion has a number of causes, including the tendency, under the IGA FFR, for state portfolio departments to have far less to do with agreement negotiations on a regular basis while, on the other hand, the Commonwealth has tended to adopt a more piecemeal approach to national reform ('they want to do discrete things; there's not necessarily a driving desire to achieve change in outcomes' one official complained, while another bemoaned the fact that 'We have the marginal conversation, the incremental conversation each and every time' [Interviews 15 and 17, State line department]). Many officials remarked on the proliferation of input/output focused agreements that did not meet the IGA FFR's standard of 'nationally significant reforms or service delivery improvements.' As a result, negotiations tend to follow idiosyncratic pathways that are highly dependent on the politics of the issue. This allows ambiguities in the 'rules-in-use' on agreements to be exploited by change agents and reformers.⁴⁵

More generally, the minimalist formal rules for COAG allow it to be instrumentally deployed

⁴⁵ This illustrates Mahoney and Thelen's argument that problems of rule interpretation and enforcement open up the space for actors to implement existing rules in new ways (2010).

as Prime Ministers see fit. Many of the ‘old timers’ who have spent years in intergovernmental management have seen each successive Prime Minister take a very different approach to COAG; from Howard’s hands-off approach

I remember the last years of the Howard government and there wasn’t very much interaction at all. There weren’t many COAG conversations (Interview 17 State central department)

to Rudd’s reforming zeal

hopefully we’ll never see a Rudd period again where we have four COAGs a year. I think I spent that year on the plane for pretty much 90 per cent of my time (Interview 19, State central department)

and to Abbott’s shift away again from using COAG:

Tony Abbott kicked a whole lot of subject areas out of the COAG space (Interview 20 State line department)

Some state officials, particularly where they have experience of working at both the Commonwealth and state levels, have used such malleability to try to push back against the perceived passivity of the states. As the head of one state public service explained,

We’ve tried to change that dynamic. I will always start from the position in a multilateral negotiation by saying: ‘If I was making the final decision, what decision would I like? Let’s try and think that through and move in that direction,’ whereas you do see with a lot of states that their default position is, ‘I’m waiting for the Commonwealth to put the position and lead the conversation.’ (Interview 10, State central department).

Some analysts have pointed to the lack of formality in COAG’s rules and Prime Ministerial domination of its agendas as evidence that COAG has little standing as an institution.⁴⁶ My interviews suggest officials distinguish the malleability of its role and rules from a broader view they have of COAG as an enduring institution above and beyond the politics of the day. On the contrary, many of them felt that malleability was an advantage that served the pragmatism I discussed in Chapter 2:

The strength in infinite adaptability means that if you can come up with a good idea about how it operates, then there is nothing to stand in the way. There’s no defence of the status quo because the status quo is so minimalist. (Interview 18, State central department)

The prevailing view amongst officials is that COAG operates most successfully on a balance of policy initiation, consent and acceptance. That is the aim of the underlying processes of

⁴⁶ For example, Phillimore and Fenna argue that ‘the degree to which COAG *exists* as distinct from merely *occurs* is a moot point. COAG is...simply the occasional summit meetings of first ministers from across Australia rather than an ‘institution’ in any meaningful sense’ (2017, p. 602; italics in the original).

intergovernmental management and consequently —out of ‘respect’ for COAG as an institution, as one official put it (Interview 10, State central department) — officials’ meetings tend to avoid overt politicisation, even where their governments’ political directions were a constraint. If, as they see it, central agencies are doing their job, COAG’s agendas must reflect national outcomes and priorities, not just the Commonwealth’s. This introduces an important point about the nature of intergovernmental management as an institution in its own right that I will examine in detail at Chapter 5.6.

4.3 Ministerial councils

4.3.1 Background

The number, roles and functions of COAG’s intergovernmental ministerial councils in debating, mandating and implementing policy reform has varied over time.⁴⁷ In 1992 their number had grown to 45. Consequently, in line with the view that COAG was seen as a way of reducing the importance of these councils, COAG’s first communique ‘noted that concerns have been expressed about the growing number of ministerial councils, the apparent overlap and duplication in their coverage and blurred lines of accountability to Governments’ (COAG communique of December 1992). While the number of ministerial councils was halved to 21 in June 1993, it had crept back up again to 31 by October 2009.⁴⁸ COAG agreed in April 2010 to a reduction to 11 or fewer councils but this had doubled by 2013. Accordingly, COAG announced a further reduction to the current eight councils in December 2013, with ministers meeting on an *ad hoc* basis ‘where there are important areas of Commonwealth and state cooperation outside the Council system’ (COAG communique of December 2013).

Phillimore and Fenna describe the role of ministerial councils in Australian federalism as ‘explicitly designed as a system with COAG at its apex with the councils bound to it’ (2017, p. 608). In essence, the councils are COAG’s executive arm, and relations between COAG and its ministerial councils are close and extensive. The councils’ purpose is to ‘focus on national priorities...and progress COAG priorities and referrals of work’ (COAG 2019). Most of the councils are chaired by the relevant Commonwealth minister.⁴⁹ The councils are expected to make decisions and progress work within their remit but are expected to raise issues with

⁴⁷ See Phillimore and Fenna (2017) for a review of the history of ministerial councils

⁴⁸ Interestingly, Simeon notes a similar tendency under Canada’s ‘collaborative federalism’ of the 1990s (2006, p. 324)

⁴⁹ The exceptions are the Health, Attorneys-General and Education Councils which inherited a rotating Chair from their pre-2013 predecessor.

COAG that ‘genuinely’ require the attention of Premiers and the Prime Minister (Department of the Prime Minister and Cabinet 2014, p. 2).

Phillimore and Fenna describe great variance in the councils’ outcomes, ranging from conflict to inertia and occasionally to the facilitation of important reforms (2017, p. 609). They suggest that councils are more likely to be successful when they minimise incursion into existing state approaches, deal with jurisdictional spillovers in the relevant policy sphere, allow the states to participate in emergent delivery infrastructure and bring an injection of Commonwealth funding to underwrite new agencies and facilities (2017, p. 610).

My research highlights the importance of understanding when and how the way officials worked on intergovernmental management contributed to COAG and its councils, particularly in a way that helped them deliver reforms.⁵⁰ A particularly salient issue relates to the way variance in the performance of ministerial councils reflects the role officials play in their operation, how they were viewed and how such perceptions affected their practice.

The aim to make COAG a high level strategic forum, with ministerial councils to manage the technical details, is illustrated by the otherwise surprising fact that only four communiques since the 2013 changes explicitly refer to a ministerial council, whether by way of noting a referral from a council, or through an explicit referral of work to a council.⁵¹ Reflecting the low formalisation of COAG’s rules-in-use, there is no formally prescribed set of bureaucratic arrangements to support the councils’ work, with the exception of the Department of the Prime Minister’s pre-eminent role in providing COAG’s secretariat.⁵² Accordingly, a range of permanent, semi-permanent or *ad hoc* working groups and secretariats has been established, reflecting in some cases the legacy of older and more formal networks. The latter include the Australian Education Senior Officials Committee (AESOC), comprising the heads of the

⁵⁰ Watts’ international survey of intergovernmental councils demonstrates that the Australian experience with COAG and its ministerial councils mirrors the establishment over recent decades of formal and informal councils and conferences in most federations. Watts concludes that in most cases they have been of considerable value for helping to manage the growing interdependence of governments and facilitating intergovernmental collaboration, with many federations introducing reforms to make these bodies more formal and more effective as coordinating institutions (2003, p. 4). In Germany, for example, despite their critique of a lack of research on the subject that echoes Phillimore and Fenna’s in the Australian case, Hegele and Behnke conclude that councils play a strong horizontal coordination and information exchange function (2017, p. 544).

⁵¹ The exceptions refer to a Ministerial Council on Indigenous Affairs to manage ‘Closing the Gap’ targets and a Murray-Darling Basin Ministerial Council to manage the Murray-Darling Basin Plan.

⁵² Elijah makes a similar point, describing the emergence and growth of Australian ministerial councils not as a designed institution but ‘a logical response to the contradictions of [concurrent] Australian federalism’ (2018, p. 13).

Commonwealth and state departments responsible for school education and/or early childhood and chaired by jurisdictions on a revolving basis. AESOC is supported by a number of subgroups working on schools, early childhood and data. The Education Council and AESOC are supported by an independent Secretariat funded by all member governments to provide advice and support to the Chair of the Council, and the AESOC Chair.

Similarly, the Australian Health Ministers' Advisory Council (AHMAC) has four principal committees which report directly to it, comprised of chief health and medical officers, the jurisdictional directors of mental health and the deputy secretaries of the health departments. These committees are also supported by secretariats. The Energy Council is supported in developing national energy market policy by a committee comprising senior officials from council members and is chaired by the Commonwealth.

Technical policy work is done in these committees, rather than in and through COAG itself, and officials noted that 'they actually do a lot of work that doesn't necessarily result in a big first ministers' agreement' (Interview 15, State line department).

4.3.2 Ministerial councils and the practice of intergovernmental management

In terms of their role, power, significance and perspective, there are differences between COAG, COAG's ministerial councils or their equivalents, and the institutionalised and ad hoc meetings of officials that support their political executives. As their purposes vary, the work programs and practices adopted by ministerial councils also varies, so that 'some have been consultative, others more active; some have acted as information exchanges while others have been charged with responsibilities to develop national agreements' (Arklay et al. 2017, p. 104).⁵³

COAG is the preeminent policy forum, with some officials questioning whether much of significance emerges from the ministerial councils. As one retired senior official put it,

most of the stuff in these ministerial councils and the officials' committees which support them is very incremental. It is very seldom that you see the big picture reforms being promoted through those ministerial councils. Those things tend to get flicked up to COAG because the Prime Minister wants to announce a substantial piece of reform on a given area. (Retired senior official, Interview 3)

A number of interviewees suggested that, with little stimulus from COAG itself for major

⁵³ I note a similar variety reported in other federations, such as the 18 sectoral ministerial conferences in Germany (Hegele & Behnke 2017, p. 530).

reforms, the ministerial councils had become stagnant, similarly lacking a policy reform or innovation agenda.

I think it is very much now on a cycle of just constantly renewing existing agreements. I think years ago they would have been very much more at the cutting edge of coming up with solutions to complex problems, really thinking through reform longer term. I think they're very much more about the machinations of the architecture of agreements. (Interview 19, State central department)

Even the councils' limited technical agenda was hampered by the lack of any requirement to report back to COAG or the absence of formal endorsement and mandate. For example, an official from a state environmental regulator described the agreement on national environmental remediation programs as

just a document which people can choose to adopt or not adopt. Whereas a National Environment Protection Measure that's come down from the Commonwealth where everyone's participated, it's a much stronger position, like the old days of the National Environment Protection Council where there was a group of people that could lead things and people from the states subscribed to participate in it to get an outcome. (Interview 32, State line department)

I have noted the Commonwealth's domination of the agenda and proceedings at COAG, particularly where major political and financial agreements are involved. Similarly, the agendas of the ministerial councils tends to reflect the priorities of the relevant federal Minister:

If the national agenda is running fast, has a lot of interest, priorities and our minister thinks it's important then we'll think it's important. If the national minister doesn't think it's important, ours won't think it's important, because they don't sit down and talk to each other about it at the meetings. (Interview 20, State line department)

Botterill noted this tendency at work in the then Primary Industries Ministerial Council,⁵⁴ with officials telling her they regarded preparation for ministerial council meetings as a 'part-time activity after the real work is done'. Consequently, she argued that that Council was only effective at 'handling technical, cross-border issues of a non-controversial nature' particularly as ministers in these meetings often did not have backing from their cabinets for the funding necessary to effect significant reforms (2007, p. 196; Phillimore and Fenna (2017) make the point about federal domination of ministerial councils across the board).

However, the effects of such domination vary; as we will see shortly, different Ministers may use councils and their supporting infrastructure in different ways, opening different opportunities for change to the officials who support them. Consequently, this domination by the Commonwealth of the ministerial councils' agendas has important implications for policy

⁵⁴ This council was abolished altogether, with no replacement, in 2013.

generally, and for the negotiation processes carried out by officials. As one official from a state line department noted,

The actual ministerial meetings themselves are rituals. Everyone knows what's going to happen and everyone knows what their position has been. That's all been negotiated beforehand. (Interview 15, State line department)

The importance this gives to the negotiation process and the rules and conventions associated with it are explored in detail in the section on bargaining and negotiating at section 4.4.3. In particular, the comment presages the discussion there of the extent to which officials in their policy work try to balance their representation of their ministers' and jurisdictions' positions with a general, depoliticised approach to securing an effective and efficient process overall. (Indeed, officials noted the similar skills sets involved in managing cabinet and COAG processes.)

Once they are not dealing with first-order funding and policy priorities set by the Commonwealth, interviewees felt that councils and semi-formal ministerial meetings operated on a more consensual basis, particularly where the Commonwealth has no financial incentives or sanctions at play:⁵⁵

big money deals tend to go into first ministers. So the other ministerial councils have to be very deliberate about doing reform together, because it's not being driven by a deal necessarily in quite the same way. They might get together for political reasons because one minister is really excited about their reform agenda and wants to share it with their colleagues. (Interview 15, State line department)

This lower formality can occasionally produce tensions with 'senior' forums or political executives: for example, where a ministerial council or a less formal meeting adopts a position that has fiscal impact for a state that hasn't been considered in its budgetary process.

Differences in the role of ministerial councils are reflected in the different ways officials organise and work in support of the federation's councils and forums. Below SOM and Deputy SOM meetings, bureaucratic structures are differentiated by the extent to which Ministers are engaged and driving the agenda, compared to opportunities for officials to play a bigger role in determining what's on the agenda.

The instrumental malleability of these arrangements, and the impact on the federal system

⁵⁵ This appears to reflect a common differentiating factor in all federations, where the purpose and operations of intergovernmental councils varies widely depending on the degree to which the national government and national objectives are driving the meetings (Behnke & Mueller 2017 p. 521).

when they are changed, is illustrated by the introduction of a new form of working group by the Rudd government. These working groups were chaired by a Commonwealth minister working directly with state officials, a classic example of the Commonwealth adapting the federal system to drive reforms.⁵⁶

One Commonwealth interviewee recalls that ‘officials were really freaked out’, at least initially, but notes that at least a couple of these working groups worked well because of the relationships that developed between the relevant Commonwealth minister and the state officials, while others were less productive (Interview 21, Commonwealth line department).⁵⁷ Despite these positive relationships, however, the outcomes were undermined by what a state official describes as the ‘weird dynamic’ whereby ‘Commonwealth ministers were meeting with state bureaucrats and our ministers weren’t involved in any way’ (Interview 19, state central department). As a result,

the line ministers who’d been involved in them, both at the Commonwealth and at the state level, felt very disenfranchised because things then just went into the COAG arena, and despite things having gone through their internal cabinets and our Commonwealth strategic policy and budget committee, they were not at the table for when the final decisions were made. (Interview 21, Commonwealth line department)

The interviews suggested ministerial council structures and processes have both positive and negative effects on the practice of intergovernmental management. There did not appear to be any conclusive difference between the number of times interviewees expressed positive as opposed to negative views about ministerial councils.⁵⁸

The interviews highlighted the benefits of formal organisational structures in promoting personal relationships between ministers and bureaucrats, prioritising and getting work done, providing a corporate memory on major policy processes and decisions and a governance structure for tracking outcomes. The formality of council proceedings, and the resources provided by their independent secretariats, give smaller jurisdictions the opportunity to have an impact on policy making they would otherwise be denied. Finally, the seniority of COAG

⁵⁶ And an example of what Meyer calls an ‘environmental jolt’; not a critical juncture per se, but a transitory, disruptive event that can potentially benefit a resilient institution, particularly where organisational learning ensues (Meyer 1982).

⁵⁷ It should also be noted that the relevant state ministers did not participate.

⁵⁸ I coded 43 positive references compared to 38 negative references. Breaking this down further, the numbers suggest that there might be more negativity about the Councils from officials working in policy areas where they had been abolished, and conversely that officials in the Territories were more positive than those from the other jurisdictions, both of which issues I explore further in the following sections. Of course, numbers are too small in this study to do more than note these as possible questions for future research.

and the standing councils encourages longevity and stability in their membership at the officials' level, contributing to the relationships between them and the depth of their technical expertise.

The formality of council organisation provides procedures and a mandate for handling disagreements and suppressing divergent interests, even where this constrains the individual agency of ministers and their officials. At the highest level, the conduct of COAG in the full public eye puts some pressure on states to sign up to bilateral agreements where other states have already done so. More generally a council

can come in over the top and reach an agreement about how they want to handle the most thorny issues and that can facilitate another discussion at my level, and then we can use that and go 'Okay, here are our running instructions for resolving these issues, let's keep the conversation going', and we solve the problems. It's almost like the rules of engagement, they set the direction that they want to head in. (Interview 1, Commonwealth central department)

Many interviewees drew attention to the amount of work performed for these councils that did not necessarily surface at COAG, but nevertheless contributed to policy development. For example, the routinisation of council work ensures better outcomes when the political executives meet:

basic things like agendas and papers and time lines. Rushing that stuff really shows you up when it gets to a ministers meeting because no-one can agree on anything because there's the pre-work hasn't been done to put something meaty on the table to agree. (Interview 15, State line department)

In the case of the federal and state treasuries, jurisdictions volunteer to coordinate this work and to facilitate the discussion of previously unforeseen issues arising from national partnership agreements, or producing a consensus on the future of those agreements that are expiring.⁵⁹

Similarly, the Murray Darling Basin ministerial council appointed a national water reform committee of officials to work with the Murray Darling Basin Authority because the authority appeared to be unaware of decisions that had previously been agreed between the states and the Commonwealth.

Less formal ministerial meetings provide an important opportunity to develop working relationships and trust without impinging on jurisdictional interests; exchange information and data; test ideas and explore the finer details of policies in a less constrained manner, to inform

⁵⁹ National Partnership Agreements are time limited agreements and would normally identify expiry dates, with the expectation that their performance and outcomes will be reviewed beforehand.

their consideration at a higher level.

In terms of policy outcomes, officials described a ‘ratchet effect’ as councils provided a forum for states to compare and drive reforms higher in incremental steps that did not provoke opposition from jurisdictions that were less advanced on that policy front.

Similarly, officials pointed to NAPLAN and the national curriculum as outcomes of these structured responsibilities in the more formal councils. I have left the introductory qualification in the quote that follows to illustrate how such views contribute to an overarching narrative about the councils that exists independently of any individual’s direct experience:

There was this story that I heard—it was before my time—where [the then Education Minister] threw all the officials and all the political people out of the room and it was called the Night of the Long Bottles, because bottles of wine kept coming into the ministerial council, but he achieved measuring literacy and numeracy on a national scale, having common data definitions. A nationally agreed data definition is only there because of this history. (Interview 41, Commonwealth line department)

At the time of these interviews, the Northern Territory was chairing the Education Council/AESOC. The availability of secretariat support means that smaller jurisdictions are able to play an equal role in chairing and leading council work, where they would otherwise lack the human and financial resources to do so.

it gives us an opportunity to influence in a different way and facilitate in a different way. It ensures that you’ve got probably a perspective where it’s not just a single lot of dominant voices from very large jurisdictions that take the leadership role. (Interview 28, Territories Line Dept)

Finally, many officials argued that formal structures provide a platform for the development of interpersonal relationships, allowing for more effective approaches to policy reform and a quicker response to crises and challenges. One official compared the more formal COAG Energy Ministers Council with the informal meeting of environment ministers:

The COAG energy ministers meetings, they’re quite a deal. They get up the night before, meet, have a dinner. We talk with our colleagues, then the next morning ministers will get together for a private breakfast and then there’s a meeting. COAG energy, that’s quite a splash. But the other ones are pretty skinny affairs, the environment ones. We just turn up and there you go. (Interview 20, State Line Department)

Interviewees also discussed the costs, risks and problems associated with ministerial council work. In particular, ministerial councils can allow jurisdictional and organisational interests to prevail over outcomes. The other side of the purposive routines noted above is empty procedure, where the outcome of negotiations is pre-determined:

The actual ministerial meetings themselves are rituals. Everyone knows what's going to happen and everyone knows what their position has been. That's all been negotiated beforehand. (Interview 15, State line department)

Councils can become incremental and bogged down: one particular ministerial council and the meetings of officials who supported it became known as 'the Sargasso sea' of public policy: 'For some reason, the lawyers just loved these jamborees with very finely drawn attention to detail, but it was often not very strategic' (Retired senior official, Interview 3).

If you give someone a job of organising a secretariat, of organising meetings of ministers getting together, well, there will be meetings. There will be agendas. There will be things for them to do. That's potentially lots of busy work that doesn't deliver a lot of outcome. So structures are set up, then there's a level of servicing cost for that which may or may not deliver good outcomes. (Interview 27, Commonwealth line department)

Getting bogged down in this way appears to be a particular risk for the more highly formalised councils where their history and conventions can become a deadweight, particularly to the extent that their conventions preclude the kind of 'crash through' by a minister described above. One such council, an official complained, hadn't changed in decades:

They still do the 'Call for nominations,' 'Here's the agenda,' and everyone writes papers and the recommendations always get reduced down to the lowest common denominator of what you can get across the line. And despite every minister – because they usually chair it for 12 months – saying they want their conversations to be more strategic, the bureaucracy has not been able to find a way to enable that desire. (Interview 5, State line department)

Similarly, while councils can provide an authorising platform for reform, they can also 'give you a formal mandate not to get things done, because you can defer things to the process. You all talk about the process. If something's in the process, we've got to wait for the process' (Interview 2, Commonwealth central department). Part of this slowing includes excessive downward delegation, particularly from senior officials to their deputies and beyond, to the point where there are so many of these meetings the network becomes fragmented and relationships fail to develop.

Conversely, some ministerial councils fail because they have become 'battlegrounds' where 'people want to play big 'P' politics, you can actually not go anywhere at those meetings' (Interview 31, State line agency). Rather than burying the potential outcome in progress, such councils refuse to make a decision, preferring rather to 'pass it back up the line again' to COAG. Senior officials' meetings can adopt a similar culture, either because they are locked into positions taken by ministers or because 'people in that meeting are not the people who have the views':

It’s very much, from my experience, a forum to say no. It’s not used as a forum to solve problems. I have learnt through experience the best thing to put through those formal structures is something that’s already been informally settled. (Interview 39, State line agency)

Individual agency plays a role in overcoming these problems or even preventing them from arising in the first place. For example, officials from the central agencies block lower priority, technical matters from clogging the agenda at more senior meetings, and at COAG itself, albeit with mixed success:

you’ve got a chance to say "No, that’s not what we’re after, what we’re after is you guys to sort it out." Our senior officials can agree that something not be considered by COAG again, but it doesn’t always lead to the ministerial council going "Okay we’re going to have to sort it out." (Interview 2, Commonwealth central department)

In most cases, it is the jurisdiction and formal organisational role that provides the official with influence. However, personal reputation may give some officials greater standing than others, and such standing is an important form of institutional capital that can be used to find a way through blockages. As the following suggests, such standing is frequently a function of longevity and experience rather than the individual’s formal position:

when some jurisdictions speak people tend to cut them off more, or dismiss them, whereas when the manager from New South Wales speaks, he is very experienced and everyone seems to listen and no-one cuts him off, and certainly at my end no-one’s rolling their eyes. So the same level of respect is not just given freely to everybody, there seems to be a differentiation between people who’ve been in the game, if you’ll call it, longer than others. (Interview 3, State line agency)⁶⁰

4.3.3 A critical juncture: the abolition of ministerial councils

The streamlining in 2013 that led to the abolition of a number of COAG ministerial councils forms a critical juncture in historical institutional terms; that is, a relatively short period of time during which actors face a broader than usual range of feasible options and consequently the probability that their choices from among these options will have a significant impact on subsequent outcomes (Cappocia & Kelemen 2007, p. 348). How and why these choices were made tells us much about the role of individual agency in intergovernmental management practices, how officials respond to the opportunities and constraints of formal structures, and how agency contributes to systemic change and resilience.

On the one hand, a perceived effect of losing official council status is the loss of ‘gravitas’ it entails, meaning ‘profile and clout and the level of seniority and resourcing that goes along with the need to service a ministerial committee,’ resulting in a shift from a structured agenda

⁶⁰ See also the discussion on ‘longevity’ at 5.5.2.

and process to ‘working politely across jurisdictional boundaries on things that are largely of a non-threatening nature’ (Interview 20, state line department). Interviewees nominated specific policy areas that had been affected by this loss of momentum, including the listing processes for threatened species, the development of model OHS legislation and housing policy.⁶¹

We’re working through a structured process, with a bit of discipline associated with that. Now with the change of ministerial responsibilities and with the drift away from it being a real formal structure, it’s kind of just dropped off the agenda. (Interview 20, State line department)

In some cases, when ministerial meetings lost their official council status, ministers stopped attending, and, as a result, so did their department heads or chief executives, delegating attendance to their subordinates. There was even a suggestion that the less formal, relationship-building meetings that took place on the margins of formal councils, such as the dinners officials held around their meetings took place less frequently, or had less status, following a council’s abolition.

However, other officials (across the Commonwealth/state divide) felt that the abolition had changed little in practice. This was because, first, the formal abolition of the council was followed by its effective continuation as those ministers continued to meet, dealing with policies on agriculture and the environment, children, families and housing (Phillimore & Fenna 2017, p. 609). In many, if not all cases, such meetings are supported by the same structures of senior officials, their deputies and working groups as the official ministerial councils. Thus, in the case of the environment ministers,

Minister Hunt as the responsible minister, and Minister Frydenberg after, said, ‘I’ve got plenty to do here, and I’m going to get on and do it.’ So it made no material difference. (Interview 30, Commonwealth line department)

Second, abolition of a council’s formal status may not have had much of an impact if there was little Commonwealth money on the table for reform in the first place.

The loss of official status may even, to some extent, have freed these meetings from the tendency to get bogged down noted previously. A state environmental regulator felt that the abolition of the Environment Council gave his informal network

a chance to reset, refresh and absolutely be certain about what the priorities are going to be, if we’re going to do the cross-jurisdictional collaboration. The ministerial council was an

⁶¹ Following abolition of the standing committee on community, housing and disability services, housing ministers did not meet until three years later in 2016 (Housing and Homelessness Ministers’ Meeting Communiqué, 31 March 2016)

opportunity to have a discussion at the federal level with all the ministers. Nothing’s changed from that perspective. It wasn’t any more effective or speedy in doing things than what we’re currently doing, because a lot of it comes from the good will of all the agencies that are participating, and they’ll only put in the good will where it’s a particular problem. (Interview 33, State line agency)

A number of officials commented on the opportunity to work more productively in the absence of the formal, Commonwealth-driven agendas at the ministerial councils. As a result, ‘they actually do a lot of work that doesn’t necessarily result in a big first ministers agreement’ (Interview 15, state line department). Officials from smaller jurisdictions also felt that they had more of a role to play in the less formal arrangements, where there was less at stake and hence less domination by the bigger states.

The primary ‘option’ officials chose to navigate this critical juncture was by replacing the formal council infrastructure with other meetings of varying levels of formality. This was particularly the case where ministers and officials saw the benefit of continuing to discuss policy issues with one another, to commission and receive information inputs and to explore options for harmonisation and policy transfer.

Networks re-emerged as a result of individual endeavours at senior levels, such as between the heads of the Environment Protection Authorities (HEPA), and amongst mid-level regulators and technical specialists. In the case of the former,

when there was no longer a regular meeting of senior officials, environment officials and environment ministers, the heads of EPAs across Australia and New Zealand decided that there were issues that were not being addressed and we formed a group called HEPA. (Interview 12, State line agency)

Similarly, the various state government representatives maintained the contaminated environments network (CEN)

when the ministerial group got disbanded and we really had no direction, it was the interest of the representatives on that kept it going, because it didn’t have to keep going. The CEN was able to sustain itself in that period where there was nothing really running it. (Interview 32, State line agency)

A different strategy officials adopt, where a structure is in place but is not providing sufficient support for what they perceive as a priority, is to elevate the group’s seniority to provide it with policy ‘ballast’. For example, officials decided to elevate a low-key network that was monitoring indigenous sexual health into a group with ministerial representation and the involvement of senior officials from the portfolio ministries:

having representation on that group who are decision-makers and who can make decisions in the room rather than this thing of having a group that can have a conversation but don't actually have any ability to make decisions or commit funds. (Interview 4, Commonwealth line department)

Descriptions of the ministerial council system frequently refer to the 'proliferating' organisational infrastructure as if it were some natural outcome of the system. It should be recognised that exercising agency to change or restore formal structures requires vision and commitment; it is a very particular form of agency, where substantial personal resources and organisational capital will have to be harnessed, particularly as there are no well-worn pathways for actors attempting to establish new structures in the federal system; 'creating a mandate from thin air' one official put it. One official described her considerable personal investment in establishing a network of environmental regulators, in the absence of a formal mandate from a ministerial council and in the face of doubts from her manager:

I had to argue quite strongly for a period of about eighteen months to two years to my manager that this network was still worthwhile, and that it was bringing the organisation and the unit that I'm in benefit. He could see that it was bringing the organisation benefit, but he didn't share the same view that we should be running it anymore. And he also wanted to know where the authority for it was coming now that that standing committee had disbanded. So I undertook to get HEPA's approval, and that took a considerable period of time, because they meet I think six-monthly, and have a lot of things on their agenda. (Interview 3, State line agency)

The nature of these network-building actions and strategies has interesting implications for federal dynamics theory and its historical institutionalist methodology. They appear to be a particular example of Benz and Colino's 'adjustment' process described in Chapter 2, and what Jabko and Sheingate refer to as 'order preserving innovations' where agency is associated with the maintenance of institutional structure (2018, p. 313). Such work is

an important source of institutional dynamism that standard approaches often miss. As they frantically strive to preserve the status quo, actors typically re-engineer order in complex ways (Jabko & Sheingate 2018, p. 313).

None of the modes of incremental change posited by historical institutionalism appears to equate to such strategies. Neither 'displacement' nor 'conversion', which involve removal or changes to rules apply, nor does 'drift', which requires actors to choose not to respond at all; the closest appears to be 'layering', which involves the introduction of new rules 'when institutional challengers lack the capacity to change the original rules or set up a new system (Mahoney & Thelen 2010, p. 17). As in the case of the abolished COAG councils, 'layering' is a course adopted by actors in an environment where they face strong veto powers over their actions and a low level of discretion in interpreting the existing rules.

Mahoney and Thelen suggest layering strategies are carried out by change agents they designate as ‘subversives’, who are committed to institutional displacement but can only do so from within (2010, p. 25). However, the officials I have described are strongly committed to federalism; the crisis, in this case, ‘lead[s] to a process of creative adjustment rather than an unraveling of authority’ (Jabko & Sheingate 2018, p. 316). The latter argue that ‘efforts to preserve order extend beyond veto points or selective rule following to include a wider array of creative gambits that contribute to institutional change’ (2018, p. 322). Perhaps a more appropriate metaphor for these officials who are working to keep their networks and channels open is that of ‘diplomacy’, particularly in the way Rhodes describes this as a traditional bureaucratic skill involving negotiation and persuasion (2016, p. 644).

Accordingly, I argue that a new set of factors, beyond historical institutionalist accounts of veto powers and interpretational discretion is needed, along with a new understanding of the modes of actor response and motivation. I will argue that these are ideational in nature, and consequently I will leave that discussion for Chapter 6.

4.4 Agreements

4.4.1 Background

As noted in Chapter 1, the main areas of state government expenditure are governed by a series of national agreements with the Commonwealth. Tied funding represents just under half (47%) of the total funding from the Commonwealth to the states. Consequently, fiscal federalism is perhaps the single most important driver of intergovernmental management behaviours, rules and norms. It plays out in every one of the areas I have hitherto discussed.

Australian federal financial arrangements have followed a distinct institutional trajectory of their own, alongside the general vicissitudes of operational Commonwealth-state relations. Parker’s comparative study of intergovernmental agreements between 1945 and 2008 found that a total of seventy-eight agreements were created in Australia over that period, making Australia the third most prolific in the formation of agreements, behind Canada and Germany (2015, p. 47).

Following the Rudd government’s lead, COAG agreed in December 2007 to focus more on outputs and outcomes, underpinned by a commitment from the Commonwealth Government to provide incentive payments to drive reforms. The IGA FFR is primarily an *aspirational* framework, couched in terms of objectives which aim to deliver

enhanced public accountability through simpler, standardised and more transparent performance reporting by all jurisdictions, with a focus on the achievement of outcomes, efficient service delivery and timely public reporting; reduced administration and compliance overheads; and stronger incentives to implement economic and social reforms (Council of Australian Governments 2009)⁶²

Accordingly, the IGA FFR rationalised the number of specific purpose payment grants from over 90 to five, and tied these to outcomes-focused National Agreements. National Partnership payments were introduced to ‘reward those states that best deliver the services and outcomes to their citizens, and not reward those that don’t’ (Swan 2009, p. 6).

Notwithstanding an initial period from July 2009 to July 2012 in which the number of agreements almost doubled, in response to the global financial crisis and an active COAG reform agenda, the number of agreements has since declined to 54 as at July 2017 compared to 82 in 2009 (Australian National Audit Office 2018, p. 14). Many commentators on Australian federalism have noted, however, that the Commonwealth has maintained its dominance in the relationship, and the Abbott Government’s review of federalism concluded that the IGA FFR had had only limited success in affecting the extent to which the Commonwealth is involved in directing how large tranches of state government funds are expended (Australia. Department of the Prime Minister and Cabinet 2014, p.37). Fenna notes that some National Partnership Payments ‘are truly trivial, others seriously substantial; many apply the kind of intrusive conditionality that was so deplored in the old-fashioned SPPs’ (2012b, p. 19). The COAG Reform Council (CRC) also noted that, although National Partnerships were meant to cover only significant policy matters relating to national objectives or expenditure priorities that had ramifications beyond any single state’s interests, many were of only medium or low national significance, and many included significant specification and monitoring of inputs and activities (COAG Reform Council, 2013; McClintock, 2013). This growth led to ‘a wider range of Commonwealth requirements and controls not dissimilar to what was in place for SPPs in earlier times’ (Gallop, 2012, p. 45). In the view of the National Commission of Audit, the Commonwealth had ‘progressively moved back towards more detailed reporting arrangements in order that Commonwealth Ministers and the broader public can have certainty that

⁶² This normative content is noticeably lacking in the IGA FFR’s predecessor, *the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations 1999*, which was primarily a vehicle for the introduction of the GST while recognising, if not advancing, ‘the need to pursue on-going reform of Commonwealth-State financial relations’. (See Carroll & Head (2010) for a detailed discussion of the changes introduced by the IGA FFR).

taxpayers’ money was being spent efficiently and in the areas required’(2014, p. 77).

The CRC also reported that there was ‘disagreement between the Commonwealth and states about the extent to which recent policy development has been genuinely collaborative. State government stakeholders considered that much recent policy development was driven largely by the Commonwealth. ...On balance, the review found that over time there was less focus on collaborative policy development, particularly in the initiating phases’. The Council also drew attention to the short-term nature of the National Partnerships, quoting state government representatives concerns that in five years, no successful National Partnership Agreement had been rolled into ongoing funding (2013, p. 45).

Just as the ministerial councils are structured in a hierarchy with COAG at its apex, Australia’s federal agreements are also structured in their precedence. The principal agreement is the *Intergovernmental Agreement on Federal Financial Relations 2009 (IGA FFR)*, which covers both the conditional and unconditional tranches of intergovernmental financial transfers, with the exception of the National Health Reform Agreement. In accordance with the IGA FFR, six National Agreements govern outcomes and performance indicators in the health, education, skills and workforce development, disability services, affordable housing and Indigenous reform sectors.⁶³ The Commonwealth also provides National Partnership payments to the states and territories to support the delivery of specified outputs or projects.

Under the IGA FFR framework, officials described three levels of agreement-making; each brings a distinct set of jurisdictional interests into play, and accordingly each is characterised by concomitant levels of constraint.

At the highest level, negotiations on a national reform agenda, generally involving large funding tranches, are conducted and finalised through COAG. These agreements often involve policy harmonisation, reciprocal legislation and standardised approaches by the states. The high political stakes involved suggest less scope for individual agency in the work leading to such agreements, although as I will show this may not always be the case.

⁶³Each of these National Agreements specifies that it is ‘created subject to the provisions of the IGA FFR and should be read in conjunction with that Agreement’. The federal government specifically decided not to apply the IGA FFR to the Health Reform Agreement, which therefore does not bear these words, reflecting its difficult trajectory including ‘an 18 month independent inquiry into the health system, a Prime ministerial listening tour of the nation’s hospitals, several fraught Council of Australian Governments (COAG) meetings and one unsuccessful attempt’ (Boxall 2011).

Agreements at a lower ‘meso’ level might identify an outcome to be achieved, but make fewer specifications as to the means. At a lower level still there is a recognition that work is underway across some or all jurisdictions to achieve an outcome, but without necessarily committing funding or involving any one approach to doing so. These lower level agreements are most likely to involve the ‘ratchet’ effect noted in the ministerial councils section above, in which reform takes place at varying rates according to capacity. Officials were also more likely to describe their personal role and effect in these lower-level processes, compared with the top level agreements.

The development, negotiation and management of agreements is second only to the support provided for ministerial councils and working groups, in terms of its significance for the practice of intergovernmental management. The negotiation of National Agreements and Partnerships forms the basis for direction setting and resourcing in the federal system. National Agreements play an important role in defining the borders, as it were, of a zone of active and substantive collaboration between the Commonwealth and states. Such negotiations are a framework and a mechanism for determining the extent to which policy making and implementation are delegated, while maintaining and achieving nationally consistent and integrated frameworks.⁶⁴

They provide a platform where many of the issues that affect institutional continuity and change play out, including inherent tensions between accountability, performance management and reporting, on the one hand, and collaboration and flexibility on the other. These tensions are embodied in the interests that shape intergovernmental relations and management: both jurisdictional, as federal and state governments negotiate over their optimal relative roles in particular policy spheres; and organisational, in the deployment and recasting of central versus line agency relationships and roles across jurisdictional boundaries.

Importantly, from an ideational point of view, all three levels of agreement-making take place in a normative context in which certain values and goals are prescribed that are relevant for the particular process in play.

As the following analysis demonstrates, these objectives and the tensions they contain are at the forefront of the way officials understand the environment in which they are working,

⁶⁴ Indeed, Weissert uses the term ‘negotiated federalism’ to draw attention to the significance of ongoing negotiations for the character of the federation overall (2017, p. 88).

occasionally in ways that challenge the academic orthodoxy on how intergovernmental relations work.

4.4.2 Jurisdictional interests in bargaining and negotiating

The primary normative framework governing behaviours and roles in agreement-making relates to the classic question of federal design, the allocation of national and sub-national governments’ respective responsibilities and accountabilities. How far should the Commonwealth’s policy interests give it a role in their design and implementation, and require performance measurement and reporting by the states? How free should the states be to prioritise and develop their own approaches, and how are their accountabilities to be acquitted, in a relationship of sovereign equals?

The IGA FFR provides a normative arena for how these questions play out in negotiations, particularly over who shapes the agreements’ conditions, and to what level of detail.

Almost a decade on from its commencement in January 2009, which they described as the embodiment of a ‘cultural change’ in Commonwealth-state relations, officials in both Commonwealth and state jurisdictions still felt those normative settings were relevant to their work, in requiring the Commonwealth and states to consider systemic policy issues and outcomes in funding arrangements, rather than maintaining traditional funding silos by or even within portfolios (occasionally with the agreement of federal line departments).⁶⁵

In essence, the agreements framework sets out the terms and conditions for an intergovernmental bargain which may be honoured or from which a party may defect. Officials in both the Commonwealth and state governments described such defection in normative terms, as a failure to achieve the IGA FFR’s objectives.

For example, state officials felt the IGA FFR regime should be producing more streamlined agreements with greater clarity on roles and responsibilities and what funding is meant to achieve. Similarly, many of them were concerned that Commonwealth line ministers and agencies were developing agreements with provisions that did not comply with the IGA FFR, and not taking these through the federal cabinet process.

⁶⁵ Although there are obviously interests at play in the way Commonwealth and state officials cite the IGA FFR as a factor in their motivations or discontents, I was nevertheless left with the strong impression that it continues to have a strong normative effect on the federal culture, pointing to the ideational aspects of federalism that I examine in Chapter 6.

The extent to which sub-national governments are active participants in designing and implementing national policies is particularly important for such a highly centralised federation as Australia's, and the extent to which this changes over time is an important indicator of federal dynamics. The growth of conditional funding in particular has been a constant source of irritation, by imposing Commonwealth control or at least purview over traditional state functions, even though the Commonwealth broadly acknowledges it does not have a detailed knowledge of what goes on at 'the ground level', in hospitals, schools, environmental matters and so on. The quantum and conditions of tied funding, particularly tensions over accountability, reporting and performance, are at the forefront of the interests and strategies at play in intergovernmental management.

Federal scholars have pointed to a number of potential adverse outcomes from this bifurcation. First, a number of researchers have argued that the states' responsibilities for implementation have allowed them to resist centralisation through 'administrative non-compliance' (Fenna 2019, p. 37). Conversely, however, it may have encouraged closer relationships between federal and state counterparts in particular policy areas, who have interests and expertise in common and in distinction from their respective central agencies (Painter, 1998b, p. 48).

The interviewees were, not surprisingly, very exercised on this point. I broadly discerned two counter-narratives in the interviews, or two normative frameworks that govern negotiations.

One narrative is based on adversarial conflict and distrust. The Commonwealth end of the spectrum of views on this issue contends that the states will typically cheat in a principal-agent relationship. A common complaint was that

if the states can cost shift they will. If they can rip off the Commonwealth, they will. If they can get the money and use it for something else, they will, and that's still my view. Indeed, because I hired some of my colleagues from state governments they told me about the cost shifting unit in the [state] government. They've got a whole unit, and they all do, apparently. (Interview 41, Commonwealth line department)

The states' end of the spectrum, which draws to some extent on the tropes of coordinate federalism, emphasises the states' drive for independence, within the constraints of fiscal federalism:

The factors that are important to us are getting as much money out of the Commonwealth as possible; policy autonomy, which is us as a state deciding what's the best way to achieve the investment outcome; concepts around state sovereignty as well which play out in how much reporting we're going to do. (Interview 15, State line department)

State officials felt they had experienced a decline in the recognition of ‘states’ rights’.⁶⁶

I haven’t heard that being invoked for a long time. But, at the same time, there’s a resistance to a stereotyping of the state role as merely service agencies of the Commonwealth. So the states’ rights rhetoric has disappeared but equally there’s a resistance to a characterisation of our role as simply being the service agency of the Commonwealth. (Interview 18, State central department)

Key points of contention based on this narrative that shape intergovernmental negotiations include:

- state officials seek fewer milestones and reporting mechanisms in payment structures and, wherever possible, greater tranches of funding up front. The Commonwealth is suspicious that the latter is a way of the states managing their cash flows, and sees the payment regime as a way of ensuring accountabilities.
- the Commonwealth often offers short term funding for projects through national partnership agreements.⁶⁷ The states are concerned that more permanent funding arrangements are not considered when limited-duration national partnerships come up for review, thereby reinforcing vertical fiscal imbalance and allowing the proliferation of minor national partnerships with the attendant transaction costs.
- The states are wary of being left ‘holding the bag’ when these payments run out, but programs are expected to continue by their beneficiaries. On the other hand, the Commonwealth is cautious about the budget risk involved if the states interpret its interest in some policy area as an opportunity for them to step back and defund or otherwise reduce involvement in some area of policy risk
- The states are concerned that short term funding can be diversion from their own policy priorities

in some of the really strong reform agendas that we’ve got running in New South Wales, you definitely wouldn’t want to divert your effort and your direction for a bit of Commonwealth money. But if the Commonwealth wanted to come and talk about how it could add value rather than divert, that would be good (Interview 8, State central department)

⁶⁶ The concept of ‘states’ rights’ in Australia has been described as ‘archaic’ (Brown & Bellamy 2007, p. 7), but periodically emerges, perhaps most notably under the ‘New Federalism’ of the Fraser Government at the end of the 1970s, when a state Premier is said to have told his Japanese hosts that he is ‘not from Australia, but from Queensland’ (Brown & Bellamy 2007, p. 27); more recently, the commitment ‘to ensuring that our Federation results in States and Territories being sovereign in their own sphere’ was fundamental to the Abbott Government’s Review of Federation (2014, p. 5).

⁶⁷ These payments facilitate and reward the delivery of nationally significant reforms by the states. They are usually made against a schedule of specified outputs or projects, and are for a fixed period of time.

- The Commonwealth, on the other hand, argues that the states' own money is being redirected to less productive purposes (in the words of one official, smaller class sizes and more teachers instead of better education outcomes).
- the need for long term stability in policy settings, to allow the states to set up the infrastructure and services needed for delivery and performance measurement, is frequently undermined by short term policy reversals at the Commonwealth level. This is a major driver of the push by the states for the ability to set their policy priorities. A number of officials commented on the risk of 'travelling at a hundred miles an hour down the highway' to progress particular policy priorities, only to be undercut by a 'bright idea' by the Commonwealth (Interview 8, state central department). As one official recalled,

We had under the Rudd government the major health agreements. There was a change of government, a new government comes in in Canberra and cuts the money out of the forward years of these agreements. So you've had jurisdictions that might have changed their service delivery systems to support that particular direction in that agreement, and then the money's pulled out from underneath them. (Interview 6, State central department)

A counter-narrative to this adversarial view, reflecting the concurrent nature of Australian federalism, contends that negotiations are a more complex phenomenon than simply an alignment behind opposing sets of interests.

Such views inform negotiating positions that see individual state interests as being best served by a collective outcome:

Last year we were contemplating whether we would get rid of the national housing agreement. We were contemplating genuinely whether it would just be rolled into a broader sort of GST financial relations deal. So none of us would get the housing agreement but we'd get the share of an increased GST which would go into the whole thing. (Interview 10, State central department)

As an example, a senior state official described moving from the aim of 'a brilliantly negotiated health funding deal' from his state's perspective, which might have delivered nine to ten percent growth but would nevertheless be *unsustainable*, to adopting a broader perspective that delivered a lower rate of growth for his state but reduced the growth rate of health expenditure overall.

we have to get a national interest outcome because if we don't get a national interest outcome the brilliant deal we've got on paper will not be sustainable. (Interview 10, State central department)

Although he came from a state with a culture of collaboration with the Commonwealth (as

recognised by his own officials and those from other states), such a view was not unusual. The key to achieving this perspective was not its enforcement through formal or informal rules, but the trust between officials in the negotiation process that allowed for what he called ‘an open book negotiation’ to take place.

Another factor in favour of collaboration is the recognition that regulatory and micro-economic policies in the states have complex spillover effects on other states. For example, a report to the Queensland Government found that the low cost of waste disposal there was responsible for large amounts of waste being transported from New South Wales and Victoria (Lyons 2017, p. 9).⁶⁸

Consequently, a corollary of this systemic approach is the rejection of coordinate federalism, with its clear boundaries between responsibilities, (particularly as this philosophy was recently articulated as the basis for the Abbott government’s federalism review) and an expectation that collaboration was necessary for the achievement of policy outcomes.

In the Commonwealth-state-territory disability agreement way back when the clean line was that the states would take disability accommodation and the Commonwealth would take disability employment. As soon as you’ve got a boundary, you’ve got boundary disputes, and that means you’ve got cost shifting. So the NDIS is now finding that the states defunded whatever they’d had. They had accommodation, so you don’t see any group houses much. It’s all gone, whereas employment stayed on and there’s a big disability employment system. (Interview 41, Commonwealth line department).

On balance, most interviewees appeared to hold that the system was one of ‘cooperative centralism’, in the sense that COAG and its councils are implementing national objectives set by the Commonwealth and imposing policy uniformity (Anderson 2008, p. 507; Kildea & Lynch 2011, p. 114), rather than demonstrating truly cooperative federalism which is characterised by joint goal-setting between the national government and the states (Conlan 2006, p. 667).⁶⁹ In part, this is an outcome of the states’ fiscal dependence, as well as the pragmatic character of Australian federalism, which means the opprobrium for exiting negotiations or agreements falls more often on the leavers:

We very, very rarely get the opportunity to walk away from a bad agreement. The Australian community doesn’t really buy into the principles of federalism in the way that communities overseas do. There’s no push back about infringement on state rights like there might be in the

⁶⁸ It should be noted that this report also found that the Constitutional requirement that interstate trade be free (s 92) meant legislation to restrict such movement could be challenged (Lyons 2017, p. 28).

⁶⁹ In the Australian case, examples of cooperative federalism appear to be more limited to the development of particular policies such as Labor’s 2007 national framework for school education (Keating & Klatt 2013).

United States or Canada or Germany. My mother doesn't care; she just wants services delivered. That means we just can't say, "Well, this doesn't look like the IGA would suggest it should look like, therefore, we're not doing this deal." (Interview 17, State central department)

Amongst the interviewees, there was a tendency for officials from line departments to hold the interest-maximising position more often, whereas officials from central agencies tended to take a broader view that included systemic and national objectives. However, this may have been a random effect; certainly many interviewees from line departments acknowledged the national perspective.⁷⁰

How we get from such recognition of a national outcome to the hard positions and distrust described above is very much an outcome of the political executives' disagreements at a higher level, and theatrics at COAG. In other words, even if such shared outcomes appear rational at the officials' level, 'it gets to premiers and discussions at COAG and it often comes down to money and distrust' (Interview 6 state central department). Consequently, collaboration by officials is not without its risks. Politicians may hold their own officials responsible if they feel their interests, political or jurisdictional, have been undermined. One official recounted how, in the course of the negotiations over the National Disability Insurance Scheme (NDIS), the Prime Minister had publicly castigated a state minister. As a result,

the bureaucrats got a lot of heat from the political players, whose view was, 'We've allowed you to go off and play with the Commonwealth and yet this is the sort of outcome and this is the sort of process that is occurring.' That was not easy for us. (Interview 42, Commonwealth (Interview 42, Commonwealth central department))

Both the adversarial and collaborative narratives have direct implications for national reform agendas. The adversarial narrative, reflecting a rational-choice type of calculus in seeking and achieving political and fiscal benefits, focuses on the incentives and disincentives for introducing reforms inherent in fiscal federalism. Interests are perceived to trump principles in this set of views, whereby there is an incentive for individual line departments, or whole states, to pursue financial benefits even though this may lead to input controls or other conditions that depart from the overarching objectives of fiscal federalism set out in the IGA FFR.

⁷⁰ This preparedness to balance national and sub-national interests tests Woods and Bowman's contention, based on their study of interstate compacts in the United States, that institutional arrangements are protected by jurisdictions with the most to gain, while those who are disadvantaged either seek reforms or exit (2018, p.491). As these authors subsequently acknowledge, even in the United States there is evidence of a more 'externally collaborative' culture in some states that does not simply reflect an interest calculus (2018, p.504).

In pursuit of such interests, different states are perceived to take quite different negotiating positions, undermining their collective capacity to influence the negotiation process.

A general starting proposition is that if New South Wales and Victoria agree on a proposition, it is usually a 'done deal' (although individual states may occasionally hold out, such as Western Australia's demurrals from health or occupational health and safety national agreements). For example, Commonwealth officials were particularly cognisant of those states' positions in negotiations over the NDIS, and dismissive of inputs from the smaller states:

at one point—this sounds disrespectful and I don't mean it to be—we got these smart-arse comments from Tasmania. I remember us going up with the comments from Tasmania and [Deputy Secretary] smiling anodynely and saying, 'The mouse that roared.' (Interview 42, Commonwealth central department)

Temporary alliances between the Commonwealth and one or more of the states are frequently established on the basis of particular roles and personas states have adopted in the federation,⁷¹ independently from any political congruence between the Commonwealth and state governments. Commonwealth officials will attempt to line up a state — possibly with a funding incentive — to break down the states' opposition to their position. Those states will often be New South Wales and Queensland (particularly, as I will show in Chapter 6, in view of the former's 'statesman' role in the federation); Victoria frequently leads the recalcitrants.

Many interviewees were critical of these side deals that individual states were making with the Commonwealth:

Victoria has some very strong views around the future of public hospitals and the future of coordinated care in this country in terms of trying to bring together primary and secondary health care systems. So throughout that debate we were very much about the outcomes for patients whereas New South Wales was about getting a deal because they knew how important it was to the Commonwealth about getting a deal. (Interview 19, State central department)

In terms of prospects for reform more generally, divisions between the states are a major barrier to policy transfer. While competition between states need not preclude inter-jurisdictional learning and imitation (for example, see Shipan & Volden 2008), the literature also points to the importance of 'yardstick competition', where the performance of each government is subject to comparative evaluations, as the basis for innovation and policy learning (Benz 2012).

In Australia's case, the COAG Reform Council, one of the most important institutional

⁷¹ These are discussed further in Chapter 6.

developments under the IGA FFR (Phillimore & Harwood 2015, p. 60), supported such yardstick competition by providing an independent avenue for COAG to discuss and report on the attainment of national objectives. Its abolition in 2014, at a time when it was developing a capacity for national evaluation and benchmarking beyond its initial remit on performance measurement and reporting by the states, makes interstate competition less productive:

I am surprised at how much time, when we do comparative performance reporting, states end up seeing themselves as competing against each other. Whereas actually what we're trying to do is to highlight where things are going well and encourage them to seek out why the other jurisdictions are getting good results. Historically I don't think that jurisdictions have been inclined to share data with each other, and potentially learn from what's happening in other jurisdictions. They've been very much "Oh no, we wouldn't want you to look at what's happening in our space. (Interview 2, Commonwealth central department)

One outcome from this pursuit of individual jurisdictional interests is reform stasis, the opposite of the upward ratchet effect I have previously noted, where there is a perceived disbenefit from leading reforms:

in order to get consensus, in order to do anything together, you end up with lowest common denominator kind of reform. We put a lot of effort into reform only for the states that have not invested in this area to get all the money because they're the ones who are further behind. We have often felt that we have been punished. It's first mover disadvantage. We've invested in our systems and we're ahead of the game. Therefore, we don't get our estimated per capita share of funding. (Interview 15, State line department)

Others saw agreements as a 'race to the bottom' whereby states who had failed to invest in reform received a larger share of the funding to help them catch up. Similarly, officials were sometimes uneasy about whether national reform programs slowed things up:

Currently in Victoria we're progressing reforms around nurse-patient ratios. If some other jurisdiction came and said, 'Let's have a national approach to how we deal with nurse-patient ratios,' we might go, 'Mmm, actually, we're doing our own thing. We've made political commitments and we're comfortable with doing that. We don't see the value of delaying our process and putting aside our political commitments to join a longer time frame that could draw out to who knows where if it goes to a national process.' (Interview 15, State line department)

The long term perspective afforded by federal dynamics suggests that the tension between Commonwealth and state interests, embodied in these issues, is not in stasis or equilibrium. The process of agreement-making is iterative, with the possibilities of recurrent funding opportunities down the line requiring strategies for longer term gaming and positioning. Thus, the salience of such issues varies over time and between policy fields; as funding for particular policies is shifted elsewhere, because of a change of government for example, opportunities open up for the states to shift their priorities as well.

States and territories generally look at the Commonwealth and say, ‘Well, if you want us to do something, we’ll take the money and we’ll do it.’ But as the money has dried up for those big grant programs, states are in a better position to drive stronger outcomes now because they can influence more strongly the approach to doing the work if they’re expected to be the funding agency for doing the work. (Interview 7, States Line Agency)

Officials have developed a range of ways of defusing, or at least managing, fiscal tensions. Most importantly, face to face negotiations are informed by a constant information gathering effort in the background to ascertain respective positions and ‘red lines’.

At the officials level you might have the discussions outside over a cup of coffee or you might have made a special effort to speak to a few people before the meeting or send a senior official to see them to try and get everybody on the same page. (Retired senior official, Interview 3)

Many of these discussions will be an attempt to find a compromise in which both levels of government secure an acceptable outcome. I found little evidence that the states were using their administrative responsibilities to subvert the centralised policies of the Commonwealth. It was far more common for officials to accept that

It’s really a shared reform objective. At the state level, if we’re doing something, say, for out-of-home care services for youths, you’re trying to prevent them from taking a more dangerous and less desirable path in life. You’re keeping them out of corrective services and out of the prisons and getting them into a job market. That’s going to impact on Commonwealth payments for unemployment benefits. (Interview 6 State central department)

These discussions feed into the preparations for COAG and ministerial councils and meetings so that, as far as possible, much of the decision making has already taken place by that time, and as much ‘heat’ as possible has been taken out of the issue.

Ministers’ meetings should be short. The things should have been settled beforehand and the fight should have been had to allow them to do their political stuff so that they don’t have to stand up and wax lyrical about something that is not actually something that they need to do at that level. (Interview 34, State line department)

4.4.3 Rules, norms and conventions of bargaining and negotiating

A discussion of the norms and conventions of intergovernmental bargaining could arguably have been linked to Chapter 5’s discussion of the informal rules of intergovernmental management. However, the ‘logic of appropriateness’ in this case is closely bound up with the formal content and process of agreement making, and the logic of consequences derived from the political and jurisdictional interests discussed in the previous section; accordingly, it appears more useful to further the analysis of this set of rules in this context.

As one official put it, ‘designing agreements is a mixture of an art and a science’ (Interview 1,

Commonwealth central department) and consequently, as in the operations of the councils, agreement-making offers opportunities to exercise agency in the drafting and implementation of agreements, and in terms of the role agreements subsequently play as legitimating structures for further work by officials.

The role of individual change agents is an important example of how the formal structures of the federation both generate and constrain policy innovation in intergovernmental management.⁷²

Middle ranking officials tended to argue that there was more capacity for autonomous behaviour at more senior levels

I would say that as officials' conversations become more senior there's more scope for the kind of frank discussion that you were talking about which would be less formal and more open in terms of the real priorities and prerogatives of different jurisdictions. (Interview 17, State central department)

Such autonomy might, for example, be exercised by departing from previously-held positions in one's own jurisdictions and, in so doing, changing the course of individual policy negotiations. For example, officials from one jurisdiction involved in negotiating the health funding agreement at the April 2016 COAG meeting decided to depart from the stance taken by other jurisdictions in seeking a restoration of previous levels of funding.

We took the approach of saying, 'Okay, we're going to go with a principles-based approach acknowledging that the Commonwealth's fiscal position is not what it was previously. Therefore, there's going to have to be a bit of give and take.' But, basically, we got the authority to go out and be an honest broker. Rather than pitch an opening bid, it was, 'Let's pitch a proposal that we think is principles-based that we think might be where we end up landing'. (Interview 9, State central department)

As an example an initiative aimed at deliberate, broader systemic change,⁷³ officials from a small jurisdiction were concerned by the piecemeal, iterative annual process for reviewing expiring agreements. They took the lead in drafting an alternative letter from state Treasurers to the Commonwealth Treasurer proposing more permanent arrangements, as envisaged by the IGA FFR in these cases.

Similarly, his colleagues in the states spoke approvingly of the 'pivotal role' played by one

⁷² A reminder that my use of the term 'change agents' is discussed at section 2.3.2.

⁷³ Categorised by Benz and Colino as 'innovation', a deliberate reshaping or partial modification of some institutions and rules (2010, p. 389)

head of DPMC,

because he had the benefit of not being burdened with much Commonwealth-state experience. So the sort of trench warfare that sometimes comes up - arguing the details or the last war about who was done over in which agreement and whether HFE is fair and does it suit my state - was really not part of his baggage. (Interview 10, State central department)

Policy brokerage, as an important form of change agency, is frequently described as a search for national or systemic outcomes as distinct from narrower organisational or jurisdictional interests. Consequently, the conditions for the exercise of such brokerage, the manner in which it is exercised and the outcomes from such endeavours are important indicators of federal dynamic trajectories at any point in time.

First, brokerage is exercised in problem-solving, mediation and finding a way to resolve sticking points. Officials tended to describe their agency to do so as bounded, first, by *formal rules* (or ‘rules-in-form’ to use the institutionalist terminology), such as those requiring clarity in agreements on when payments can be made to a state, in order to avoid a breach of the constitutional clause governing appropriations.

Second, their agency is bounded by *mandate*, bestowed normatively by the policy outcomes being sought on behalf of the political executive, and/or more generally by the policy settings established by their jurisdiction’s political executive, central agencies or ‘running instructions’ set by senior executives in their organisation. These policy bearings are ‘almost like the rules of engagement. They set the direction that they want to head in’ (Interview 1, Commonwealth central department).

Thus, in the example given above of a change in a jurisdictional stance regarding a health funding agreement, there was a *political mandate* from the Premier to adopt this position, which meant this official could ‘have a lot of phone conversations with my colleagues in other jurisdictions, but before I had picked up the phone I didn’t have to run it all the way up the chain to make sure that it was okay to have that sort of conversation’. Second, there was a *jurisdictional mandate*, via the tradition in this jurisdiction of working cooperatively with the Commonwealth on national reforms. Third, there was an *organisational mandate*: this official had developed a level of expertise in this policy field that allowed his senior officers to be ‘comfortable for me to play quite a front seat role on that’ (I will have more to say on organisations in the next chapter). Finally, there was a *policy specific strategy*: this approach did not apply in other policy areas, such as in education, for example, where

we are sitting back saying, ‘Okay, what you’re offering, Commonwealth, is not sufficient, and we’ve got all of these problems.’ We’re doing our work here ourselves on what we think might work, but we’re not proactively putting that out to other jurisdictions. (Interview 9, State central department)

In this latter case, the brokerage role was not mandated, whereas in the earlier example of the changed approach to the health agreement, ‘the Premier was very happy for us to take that approach’ (Interview 9, state central department). Once these boundaries are set, it becomes possible for more junior officers to exercise discretion on matters such as performance measurement and payment design. Indeed, a degree of autonomy is built into the negotiation process to avoid the need to constantly seek approval for minor points.⁷⁴

However, such autonomy only works up to a point. For example, on deliberating over up-front payments or payments by milestones,

we have to make a judgement about how much money, and under what circumstances we’re willing to take financial risk. In some spaces it’s easier than others, but that’s not a call for junior officers. (Interview 1, Commonwealth line department)

It is important to note that this is not a simple top-down dynamic; agency may be exercised in advising ministers or more senior officials, and in collaborating with other jurisdictions, before negotiations are underway or concluded:

I had a team and we worked with our line agency and the Department of Treasury and Finance to develop up those options and then we shopped it around to jurisdictions individually and then together. There’s an agreement from senior exec and from our minister that this was a bad deal. I think she wanted to sign just because they needed some money. We’re like, ‘Hang on, hang on, hang on; let’s see if we can do better.’ (Interview 15, State line department)

Agency and ‘veto power’ are closely aligned in agreement-making. Although the states only have a very limited power to walk out of a negotiation or to refuse to discuss a proposal, it can happen, at least when the states dig in to the point that the Commonwealth is forced to negotiate:

[the then Victorian Premier] signed a health reform agreement just before the 2010 election that gave away a portion of our GST. A new state government came in and said, ‘We’re prepared to walk away if you don’t change the GST element.’ That kind of approach, ‘We’ll walk away,’ has to be really huge. And GST is huge. That’s a state sovereignty kind of issue. That’s really rare.

⁷⁴ These different forms of mandate illuminate what Howlett and Migone refer to as ‘the strategic role of agency, as advantage has to be taken of any ongoing momentum if change is to occur’ (2011, p.60). As I pointed out in my discussion of change agents in section 2.3.2 above, such interplay between the structural and ideational context and the strategic response by the bureaucracy tests the assumptions of multiple streams analysis. The discussion here sits comfortably with the actor-centred historical institutional analysis of incremental change, such as that by Mahoney and Thelen, in their attention to whether change agents are seeking to preserve and abide by institutional rules (2010).

So it’s more about, ‘What are we really going to hold the line on to a point before we’re actually going to sign, because really we need the money.’ (Interview 15, State line department)

An important factor in such power plays is the extent to which the states adopt a unified position. In the case of a negotiation over an early childhood agreement, one state corralled the others:

we ran a state and territory process where we basically got states and territories to agree a state and territory position. We held the line and held the line and held the line, and it was on the lunch of COAG that the Commonwealth said, ‘Fine. We’ll put the full funding in for another 18 months.’ That’s also rare, but it goes to show that another factor is: can the Commonwealth pick you off bilaterally? If the deal is actually so bad that all states and territories are in agreement that it’s so bad and it can’t be lived with, that can also be an important factor which changes the deal. (Interview 15, State line department)

Even smaller states can exercise a degree of power out of proportion to their size where the approval of all the jurisdictions involved is sought. In the case of water planning, for example, officials complained that smaller jurisdictions had held up agreements for two years.

However, the ability to ‘walk away’ is very context-specific, and may depend entirely on the particular policies involved, the prioritisation by Commonwealth and state governments, and the personalities of the ministers and officials. Not only can the Commonwealth call the states’ bluff by threatening to withhold funding for services that citizens expect (especially where programs are already running), the budget cycle means that Commonwealth money is often only on the table at a point in the states’ budget cycle when they have little capacity to hold out.

Even where a formal veto is not at play, jurisdictions may have an opportunity to provide an important input:

Everybody in the heads of treasuries or heads of treasuries deputies gets to speak and they go round the table. Everyone is listened to and in a way has equal weight in these forums. While strictly speaking you don’t really have equal weight to a New South Wales or Victoria, we have weight more than our actual per cent of the population. (Interview State central department)

Negative agency is also at play at the individual level, where individual officials can veto negotiations, although this may require a degree of authority, generated by personality, position or experience, for its exercise.

4.5 Public service organisations

4.5.1 Central and line departments

The departments and agencies in which individuals work form an important part of the material,

formal structures in which intergovernmental management is practised. In particular, the limited study of intergovernmental management to date has highlighted the different roles played by central and line departments, and their different interests, perspectives and impact.⁷⁵

Warhurst's early study on this issue (see the discussion at Chapter 2.2.2 above) effectively laid the groundwork by distinguishing between line department technocrats, who collaborated with one another across Commonwealth-state lines to defend and, if possible, increase spending on that function. He argues these 'rods of iron' were 'broken' by the mid-70s by the increasing need for coordination across and between governments, leading to the emergence of what he describes as 'gossamer threads' of central agency coordination of intergovernmental relations by a small specialist elite.⁷⁶ Consequently, Painter attributes much of the greater collaboration between governments in Australia during the 1990s to the leadership of central agencies at the federal and state levels, while at the same time describing how 'officials in state government line departments such as health and education often have to be pulled back into line by central co-ordinating agencies for being too cosy with their intergovernmental partners, to the detriment of their own government's political strategy' (2001, p. 140).

In the findings that follow, I will argue that there is a great deal of evidence to suggest that both perspectives — the 'rods of iron' of line department interests and the 'gossamer threads' of central agency collaboration — continue to play a dominant role in intergovernmental strategising and organising. However, I also want to show that the demands of complex policy challenges, and the resultant need to apply technical expertise to the concerns of national harmonisation and coordination, have generated a third mode in which central and line agencies collaborate in conducting negotiations and supporting the work of ministerial councils.

To some extent, the bifurcation between the role of central and line departments reflects the distinction between COAG and ministerial councils. Central department officials tend to focus on the former, line department officials on the latter (although I will shortly demonstrate why it is important not to oversimplify this division, particularly as national policies move from COAG to a council and its working groups for their development and implantation).

⁷⁵ Galligan and Fletcher, for example, argue that there is an interrelationship between the way intergovernmental arrangements may stimulate changes within state administrations, while the latter can affect intergovernmental arrangements by changing the way policies are made and coordinated (1993, p. 26).

⁷⁶ It should be noted that Fletcher and Walsh took a different view of the emergent coordinating units in the Premiers' departments as a form of resistance to the Whitlam government's centralisation (1991, p. 6).

Central agencies provide support and guidance in four key ways: setting the general directions and strategic framework for particular negotiations; providing training and support, particularly for those officials who have very limited experience with federal agreement processes; providing specific advice on the content of agreements, such as the appropriate milestones or payment schedules, differentiating between outputs and outcomes and so on; and helping to resolve blockages in the negotiation process, or subsequently in the operation of agreements (particularly where, again, these arise from the portfolio departments' relative inexperience or infrequent interjurisdictional contact).⁷⁷

The central agency officials' first role is to develop an understanding of the 'red line issues' for their ministers' agreement and, on that basis, optimal, preferred and fall back negotiating positions. 'If you were to go beyond these red line issues, that would require you escalating', one official suggested (Interview 15, State line department).

At more senior levels, there is a greater potential movement beyond those red lines, particularly where there is a national outcome at stake. The head of one state central agency described how

I could see the way to resolve the issue and get to an agreement. So I put the idea on the table of how we could actually get there. I could hear the two more junior staff behind me flicking vigorously through the negotiating mandate and I heard, 'He does know we've got red lines, doesn't he?' It was sort of a situation where I was sufficiently confident that this was in the national interest if we got that outcome. Did it to the last letter fit within what the negotiating brief may look like? Well, probably not. I think that was pivotal in getting us to the end of actually getting the negotiations successfully resolved. But would I want too many of my officials going on that frolic themselves? Probably not. (Interview 10, State central department)

Central departments may then begin the negotiation process with a teleconference or meeting where they take the portfolio representatives through the steps, and/or subsequently review draft agreements. In that context they will often critique the draft based on its compliance with guidelines and templates:

somebody will draft an agreement and it will have a lot of these problems; they don't follow the template, they mix up outcomes and outputs, they include input controls - which we can't have. The other thing that they tend to require guidance on is payment design - states often like large, upfront, untied payments. We don't like those (Interview 1, Commonwealth central department).

Occasionally, if central agency participants perceive it as necessary, they may override the

⁷⁷ I suspect that many, if not all, of the 'uneasy and underachieving' aspects of the Commonwealth bureaucracy's relationship with other jurisdictions noted by the Australian Public Service Review Panel (Rimmer et al 2019, p. 15) may be due to such inexperience, rather than a general cultural malaise.

portfolio to direct the negotiating strategy in accordance with the ‘red line issues’.

Another important role for central agencies in assisting their line department colleagues is using their knowledge of the overall agreements framework to overcome sticking points, frequently around performance requirements.

So what we need to do is know enough about what they're trying to achieve and say to them 'Could you say something like this? Could we craft a milestone or - that looks like this? And once we start having a conversation, we can usually come up with something that works. (Interview 1, Commonwealth central department).

This division of roles introduces some interesting dynamics, not least the coalitions that emerge between central and line departments across jurisdictional lines. A state government line manager noted, somewhat admiringly, that

the connections between the central agencies are so efficient that by the time I've rung my counterpart in [the state government] Treasury to talk about a new national partnership agreement we're negotiating, they've seen a first draft from the Commonwealth Treasury, and the same happens from [the Commonwealth] PM&C to Premier and Cabinet as well. (Interview 36, State line department)

These coalitions form in response to a variety of drivers. First, central agencies work with one another across jurisdictions to persuade or negotiate with their respective line agencies to get them over the line to an agreement:

if there's a particularly intractable issue between a Commonwealth and a state portfolio agency, the Commonwealth portfolio agency might come to us and say 'We've got this problem that we can't solve, we're not making any headway with our counterparts, are you able to have a discussion with your Treasury [counterparts] so that they can have a discussion with their state portfolio agency and we can try and find some way through?' (Interview 1, Commonwealth central department)

Second, central agencies are a conduit for the political executive to impose its objectives on the process, guiding line departments to conform with government aims, and managing this ‘not very sequential’ process ‘all the way along until we reach a landing spot’ (Interview 1, Commonwealth central department). Thus, although the IGA FFR is a primary reference point, one Commonwealth central agency official noted that

if there is a decision that a funding arrangement will operate in a particular way which is inconsistent with the IGA, then we need to be responsive to the decision rather than the IGA. (Interview 2, Commonwealth central department)⁷⁸

⁷⁸ Of course, the expression and implementation of such views by Commonwealth officials contributes to the distrust expressed by many state officials

Third, central agencies see themselves as stewards of the overall framework and its objectives, and here it is the *outcome* that is the primary driver. Many central agency officials described this as a motivating factor in their involvement, without reference to any particular organisational or jurisdictional interests; rather, it is about making sure the system works and the process is effective. This shared interest between central agencies generates a particular community of interest amongst them:

we often are struck by how similar the interests and perspectives of other Treasury officials are because we’re all doing very similar work overseeing other portfolios and providing advice on similar sorts of areas using similar sorts of frameworks. (Interview 17, State central department)

Commonwealth and state Treasury officials felt that their role was a particular example of this stewardship, as they tended to have responsibility for the overall fiscal framework, and hence ‘we have the opportunity to be in agreement more often’ (Interview 17, State central department). Officials from central departments overall frequently commented on their adoption of a COAG perspective, in distinction from their line department colleagues’ focus on the particular policy dynamics in the ministerial councils.

Thus, while Commonwealth and state line departments might be keen to get the money flowing in return for a high level of input controls, they are resisted by their central agency colleagues:

Across some of the national partnership agreements we can find ourselves in a similar situation where if it came to treasuries first, we’d be putting a line through all the input controls and those sorts of things and saying, ‘No, that’s against the IGA. No, no, no.’ (Interview 25, Territory central department).

Particular normative issues kept cropping up in the interviews on this point. First, a sore point with central agency officials at both the Commonwealth and state levels was that their line departments were prone to accept input controls that violated the spirit of the IGA FFR because they were in too much of a hurry to get their hands on the money. Indeed, a state Treasury official felt that ‘Commonwealth Treasury officials are looking out for us and pushing back wherever they can’ (Interview 25, Territory central department).

More broadly, performance measurement is one of the issues that captures the different perspectives and interests central and line agencies bring to these negotiations. Central agency officials, at least in the states, are often critical of their line department colleagues for acquiescing too quickly to onerous or intrusive reporting.

Even if the Commonwealth could be persuaded to relinquish micro-management, the

performance measurement process was criticised for being inaccurate or ineffective because it assumed under-performance, rather than reflecting that the circumstances in which the original agreement had been negotiated had changed, or service delivery arrangements had changed.

Finally, the different central and line department roles generate an information asymmetry that flows on to agreement negotiations. Central agency officials confirmed that, as they approached the final stage of an agreement negotiation through COAG, the information they would share with the line agencies ‘starts to dry up. You deliberately tighten it up’ (Interview 9, State central department).

Consequently, central agency officials sometimes felt that their line department colleagues did not see the bigger picture. To take a specific policy example, state central agency officials complained that their colleagues in the education departments were solely focused on funding quanta, whereas they wanted to argue that money was not the solution to the policy issues in the education field.

Let’s start to talk about the real reform and the outcomes we want to see in education as opposed to just arguing about a bucket of money that no longer exists. That would play out in most states and territories. Most central agencies want to start talking about the changes we need to see in teacher quality or STEM or more generally local empowerment of schools. (Interview 19, State central department):

Similarly, central department officials felt that they were not being allowed to provide the appropriate input to discussions between portfolio departments, particularly where such discussions took place in the context of ministerial councils. As one territory official put it,

From the first minister’s agency perspective, you sometimes can feel like the line agency is trying to shut you out of the process without really having as good an understanding as you have of how the political dynamics work and how things are going to pan out when they get into the COAG system as opposed to the ministerial council system. (Interview 22, Territory central department)

As a result, she felt that sometimes ‘there’s even more collegiality between first ministers’ officials from other jurisdictions than there are between the line agencies and the first minister’s department from that jurisdiction’.

On the other hand, line department officials criticised the elitism (or ‘snobbishness’ as one official put it) that excluded them from negotiations, particularly as they, rather than the central departments, had the technical knowledge:

we’re supposed to be negotiating quite detailed and technical agreements and you’ve got this bunch of people around who don’t necessarily know what they’re talking about and negotiating

something that can have a very significant impact. It might be unimplementable or it can have a significant impact which actually harms service delivery. (Interview 15, State line department)

Officials in line departments also complained about state budgetary strategies that allocated priorities on the basis of information that they were not privy to and could not critique; 'so they fundamentally drive everybody crazy because it's opaque' (Interview 7, State Line Agency).

In summary, my interviews provided some support for the earlier analyses I have discussed that pitted vertical, cross-jurisdictional interest and advocacy coalitions of central and line departments against one another.

However, I also found a diversity of views, interests and strategies at play within and between central and line departments that cautions against a simplistic 'central vs line' department bifurcation. This bifurcation rests on a number of simplistic assumptions. First, it assumes that departments and agencies adopt unitary strategies; second, that such strategies are broadly divided into those of central or those of line departments; and, third, that central departments necessarily have a more strategic, long-term view than line departments.

Officials described differing perspectives between and even within central agencies; for example, in the form of

different voices within the Prime Minister's Department that would come to the fore, like economic division, that might have a view that was a bit independent of the deals that other parts of the Department were trying to strike (Interview 21, Commonwealth line department).

First ministers' and Treasury department officials mutually distinguished their cultures and interests, between the politicised, short term perspectives in the former and the more collegiate, 'rationalist' and open Treasury culture.

PMs' [Departments] and D[eartment of] P[remier and] C[abinet]s tend to believe that Treasuries work in a world that's perhaps not politically aware and Treasuries then have the view that those people operate in a way that is simply just, 'How high do you want me to jump,' and not injecting broader, longer term policy views into things (Interview 25, Territory central department).

An interesting example of the different cultures that exist within central agencies emerged from the negotiations between the Commonwealth and the states over school funding arrangements. State officials reported being 'pushed very hard from the Commonwealth because we had Prime Minister and Cabinet in there going really hard'. At the same time, however,

The Treasury bureaucrats from the Commonwealth were to one side and said absolutely nothing. They didn't want to buy into it and diminish their reputations (Interview 35, State central department)

Many officials from both central and line departments critiqued the view that only central departments take the longer-term view. This is an important issue that goes to the question of the ideas that motivate officials' behaviours and perspectives, and consequently I will return to this issue in Chapter 6. For now, however, I would simply note that the research found ample evidence that line department officials understand and accept that broader strategic perspectives might run counter to their portfolio interests, while central agency officials recognise that their colleagues in line departments frequently adopt this broader view.

Finally, officials in every jurisdiction commented on the importance of collaboration between central and line departments in order to take a solid, informed negotiating stance, the third mode beyond Warhurst's 'rods of iron' and 'gossamer threads'.

Such collaboration is based on the tendency for portfolio ministers to take the lead on particular policies and hence for central agencies to deal with their departments on the details. Both central and line departments need a good joint understanding of the red-line issues described above, and to avoid being locked in to downstream problems in implementation or otherwise difficult policy consequences. This shared interest informs the respective roles officials play and their reliance on one another:

Only first ministers' people may attend senior officials meetings - no line agency people. But we're supposed to be negotiating quite detailed and technical agreements and you've got this bunch of people around who don't necessarily know what they're talking about and negotiating something that can have a very significant impact. It might be unimplementable or it can have a significant impact which actually harms service delivery. What's best is if at the senior level there is a tripartite agreement on positioning and a functioning, working coalition between the Department of the Premier and Cabinet, Treasury and the line agency. (Interview 15, State line department)

Such central-line department collaboration was widely regarded as essential for obtaining a good outcome in negotiations. For example, an official felt that their state had obtained the best of the bilateral deals on the NDIS because 'we worked basically as one team across the line agency and central agency to achieve it, so one negotiating team' (Interview 22, Territory central department). Another official described working on a health agreement on a team comprised of the state health department and its Treasury and Premiers' Departments.

We understand the numbers implicitly. In the past, Health may not have done that because they were concerned if they gave the information over to the centre, Treasury might cut them in the next budget round. But because we had that good working relationship, we knew our numbers back to front, and we were much more effective in the negotiation because we had such confidence in the numbers, because we'd had that open sharing of information at the state level.

(Interview 10, State central department).

Similarly, central agency officials remarked that they relied on the networks between their line department colleagues for ‘fleshing out’ other jurisdictions’ views, to inform their own bargaining position; this was more important to them than the risk of any line department collusion. As a general proposition, state officials perceived less friction at the state level in formulating an intergovernmental position than there is at the Commonwealth level, largely because there is less political friction.

This raises a more general question about whether and how the general settings for public administration at any time affect particular bureaucratic practices.

For example, one official noted that ‘in my three years here I’ve seen a real change – this is about Team New South Wales’ (Interview 5, State line department). Such change may be the outcome of a number of local and service-wide developments. These include, first, the incumbency of a new team of senior officials in that state’s Department of the Premier and Cabinet who had experience at both the Commonwealth and state levels. More broadly, divisions between central and line departments reflected, to some extent, the New Public Management’s prescriptions for a split between policy and service delivery organisations. Such divisions may have weakened, particularly as the general collaborative and cross-boundary settings of what Osborne and others have called ‘the new public governance’ have gathered pace (2010).

4.5.2 Departments and statutory agencies

A second organisational setting that affects the opportunity for change agency is the divide between policy departments and statutory agencies.⁷⁹ This is an important organisational framework for intergovernmental management, because it frequently reflects a differentiation of regulatory and policy-making roles across the federation, both vertically as well as horizontally.

This divide can both encourage and constrain the capacity for officials to effect innovation and adjustment, in federal dynamics terms. The arms-length relationship between ministers, their departments and agencies can leave agency officials even more isolated from big picture policy

⁷⁹ The significance of the distinction is in terms of the degree of ministerial control. Departments are under direct Ministerial control and generally communicate directly with their Ministers. Governments may also set up *semi-autonomous* statutory agencies and corporations for reasons of efficiency, to drive innovative delivery, or because the agency needs to be able to make decisions free of ministerial intervention.

making than their line department colleagues. Similarly, role differentiation can lead to frequent changes in the allocation of responsibilities, particularly when it is embodied in organisational restructuring. One EPA official complained

Something goes horribly wrong, so they put you [ie the agency] back in the department. Then it goes horribly wrong again and they pull you out to the department. I've been here six years - it's been in, out, in and then out again, because they seem to think that the problem is about how close you are to ministers or something. (Interview 13, State line agency)

In at least one state, its EPA officials felt they had had the lead say in policy under previous COAG arrangements where there was a Standing Council on the Environment, whereas currently under the less formal meeting of environment ministers the state department of the environment has taken over the lead.⁸⁰

However, change agents can exploit such organisational role ambiguity. First, agency officials are less constrained by the need to represent their ministers' views.

They see themselves less as a branch of government - still public service, but we recognise our independence, whereas departmental regulators I do think are often hindered somewhat through the fact that they are also the policy maker and are very much more linked to ministerial policy. (Interview 13, State line agency)

Second, officials in agencies at both senior and middle management levels respond to their position on the policy chain by taking the responsibility to establish networks within and across jurisdictions and for conducting policy advocacy outside the roles specified for their agency. Agranoff and Radin have remarked on such 'boundary spanning' that takes place in intergovernmental relations, whereby 'Government agencies have both retained some of their main line functions and also have felt the need to operate outside of their bureaucratic structures in classic boundary spanning fashion' (2014, p. 13).⁸¹

It would be hard to overstate the importance of the cultivation of personal relationships in such boundary-spanning, in order to overcome organisational constraints and inertia. For example, the department-agency relationship is frequently tested by principal-agent dynamics, or performance measurement and requirements; one state's EPA was being reviewed by the relevant policy department, that was in charge subsequently of rewriting its legislation.

I know what it feels like when there is no trust and respect. That means you're second-guessing

⁸⁰ I did find evidence that, at least in the case of the EPAs, it was they rather than the state environment departments that were briefing ministers on the contamination of Department of Defence land; this may have been an unusual instance of such direct links, given the sensitivities.

⁸¹ I will illustrate such boundary spanning behaviour and its ideational sources in Chapter 6.

each other. You’re needlessly writing stupid briefs about things that need to be done. Whereas now not only does the department have our back; we operate as if we are just part of the continuum. We do the regulation; they do the policy (Interview 12, State line agency)

Evidence from a survey of agencies in the Australian Commonwealth suggests those at lower levels of the organisation are less constrained in their contacts with departmental colleagues, meeting with them far more frequently and informally than those in charge of their agencies (Smullen & Fawcett 2018, p. 52).

4.6 Chapter summary

This chapter has canvassed the impact of the federal system’s formal structures and settings on the roles and approaches of those working on intergovernmental management. It has done so through an examination of how intergovernmental management is conducted in the formal elements of the federal system: COAG and ministerial meetings, the negotiation of federal agreements and the role of departments and agencies.

The data demonstrates that policy prioritisation and development takes place at a series of levels and responds to a variety of interests and contexts. Individual officials — particularly those that I interviewed at senior levels with systemic steering responsibilities — have to negotiate amongst and between their individual departmental positions, their jurisdictional positions, the national federal policy context and, of course, the directions, priorities and strategies set for them by the political context at all three levels.

As a general point, this complexity tests a number of conclusions researchers have drawn about Australian federalism, most notably those that conclude executive federalism and vertical fiscal imbalance close down the options and opportunities available to federal reformers, *and leave the story there*.

‘Structures only get you so far’ argued one Territory official:

Even if your structures aren’t great, if you have the right agency - in other words, if you have the right players around the room and the right relationships and the right windows of political opportunity to do various things, if you have those ingredients - that actually is more important than whether you have the right structures in place. (Interview 22, Territory central department)

For intergovernmental managers, stability does not mean stasis. The abolition of ministerial councils and the restorative networks that replaced them are an example of agency at the service of systemic resilience and restoration. Indeed, a key contention arising from the description of the post-abolition environment is that more attention needs to be paid to what happens on the

periphery of the formal meetings. As one state government official put it,

There's a whole world of intergovernmental relations which I'm involved in now that never go anywhere near COAG, and nor should they.... There's this whole other world where lots of good stuff gets done. (Interview 16, State line department)

Agency is not always subversive; it may be conservative and corrective, retaining momentum and institutional memory. Order-preserving innovations are themselves an important source of institutional dynamism that standard approaches often miss. These findings support Benz and Broschek's conceptualisation of federal dynamics as involving both change and continuity over time (2013, p. 467), a matter to which I will return in the theoretical conclusions at Chapter 7.4.

Second, this chapter has reflected the interpretivist project of understanding how actors operate within webs of meaning that are derived from and inform the formal structures in which they work. Rational choice and historical institutionalist explanations work well in explaining stasis in intergovernmental management, as the outcome of national/sub-national interest equilibria and path dependency respectively embedded in institutional frameworks. However, it is to individual, or at least organisational change agents that we might look for an explanation of change in the practice of intergovernmental management.

As Hays puts it, 'structures should be understood as enabling as well as constraining....structures not only limit us, they also lend us our sense of self and the tools for creative and transformative action' (1994, p. 61). Agency, therefore, reflects the particular structural settings in which it is exercised, and their configuration at a point in time.

Rules-in-use underpin COAG itself, its councils, the agreement-making process, the relationships between the political and administrative arms of the executive, and so on. But federalism's formal structures and the processes that go on in them are imbued with values and norms that guide the work of officials. Consequently, this chapter has demonstrated that the rules-in-use governing the practice of intergovernmental management are themselves a way of balancing norms and values: between collaboration and conflict, jurisdictional versus systemic interests, the primacy of outcomes versus the integrity of processes.

In effect, there are two rule sets: one which guides officials in supporting systemic stability and process, and the other one which supports them in finding opportunities for change and innovation. Both are derived from broad value sets that inform public administration in

Australia. The first value set is derived from what Hood and Lodge call the 'serial loyalty' public service bargain between public servants and the government of the day in the Westminster tradition (2006). The second value set is based on the notion of what those authors call 'trusteeship' in which public servants possess a degree of autonomy in which they exercise stewardship over the system that runs alongside, and may conflict with, their services to the political executive. As I will demonstrate in the next chapter, such stewardship is closely related to the strong perception officials hold of intergovernmental management as a domain that is separate from political concerns or the interests of their jurisdictions.

In short, federal structures are more than just a set of constitutional, legal and political structures and processes that determine the interests and motives of the political and bureaucratic actors within them. Rather, these structures form an 'irredeemably ideational' environment in Hay's terms (2011) in which officials play an active role as 'rule takers' but also rule makers, breakers, shapers and keepers. Consequently, this chapter points us in the direction of the 'ideational layer' of federal dynamics, which I will turn to in Chapter 6.

Chapter 5

‘Swimming Between The Flags’: the craft of intergovernmental management

5.1. Introduction

This chapter shifts the empirical focus from the formal to the informal elements of the institutional layer of federal dynamics. In terms of the practice of intergovernmental management, we are moving from looking at a set of operationalised, formal structures and processes to intergovernmental management as a craft: ‘what managers do or should do in specific settings’ (Lynn 2012, p. 23). This craft is embodied in the routines and relationships that take place in and around the formal structures discussed in the preceding chapter.

In essence, the task is neatly summarised by Kay’s distinction between a ‘structuralist account,’ in which exogenous factors explain formal changes in the Australian federal system, and an account based on the way practitioners adapt to such challenges, requiring an ‘active process of governing across multiple levels and jurisdictions with attendant uncertainties and contingencies’ (2015, p. 410).

For example, to what extent and in what ways does the relative weakness of such formal structures in certain circumstances affect the way officials can exercise their agency; do they have more autonomy where meetings are less official?

The specific context for this consideration is the federal policy process. ‘Complexity and uncertainty would make policy choices hard enough even if they could be made purely on technical grounds. But policies are not made in a vacuum’ wrote the then head of the Productivity Commission (Banks 2009, p. 112). Accordingly, this chapter examines the salient elements of the federal policy cycle as practitioners discussed them, including how they understand federalism to matter in a policy-making sense.

Unlike the formal rules and guidance underlying Australia’s federal system, such as the IGA FFR or the guidelines on ministerial councils, there are no formal rules or guidelines to help practitioners navigate policy problems and the varying degrees of discretion and scope for reaching agreement. Instead, it is necessary to identify and understand what institutionalists call the ‘rules-in-use’, ‘the do’s and don’ts that one learns on the ground that may not exist in any written document’ (Ostrom 2007, p. 23). Many of these rules respond to the context for

intergovernmental management in which ‘information, trust and negotiation among interdependent actors become as salient as constitutional frameworks in reaching decisions’ (Clarke 2007, p. 57).

This chapter also provides data on the rules-in-use relating to intergovernmental meetings of varying levels of formality; how intergovernmental policy work is performed; and the establishment and maintenance of networks. Finally, as an introduction to the ideational aspects of federal dynamics in the next chapter, I examine the nature of intergovernmental management as an institution in its own right, and what we can learn from this about the way its practitioners contribute to continuity and change in the federal system.

As the focus shifts to the core practice of intergovernmental management and the ideas that shape and are shaped by it, the discursive methodology I have employed comes to the fore in the way officials use metaphors and ideas generally to help them think through their context and the strategies they adopt in response. March and Olsen describe the development of a logic of appropriateness through processes of reasoning by analogy and metaphor (2009b, p. 694); similarly, Rocco and Thurston describe metaphors as labels for complex processes of gradual institutional change (2013, p. 38). Consequently, their use throughout the interviews is an important source of data on the mechanisms at work relevant to federal dynamics.

5.2 Relations with Ministers and political constraints

No discussion of the craft of intergovernmental management is complete without considering the institutional settings for public administration generally, and their implications for bureaucratic practice. The Westminster tradition had a formative effect on the development of the Australian state governments at the time, and, subsequently, on the Commonwealth government (Parker 1978, p. 349). The tradition includes the principle that the public service is accountable to ministers, and ministers are individually and collectively accountable to parliament and the electorate. The Westminster tradition clearly distinguishes between the political role of ministers who ‘have the last word’ on all matters for which they are responsible, and a bureaucracy that is non-partisan, in that it can only be appointed and removed according to legislated rules, works loyally for whoever occupies the ministry regardless of their political stance and strenuously avoids active political participation (Rhodes 2005, p.147).

Within that context, Australia’s highly centralised federal system tends to push policy issues upwards for their resolution, frequently to COAG itself. Simeon, noting a similar tendency in

Canada, suggested this made it easier to reach quick agreement on such matters. However, he also warned that ‘conflicts become much more sharply defined and therefore more intractable’ (1972, p. 144).

A key characteristic of Australian federalism that increases the reform options available to ministers and their departments is the fact that political party symmetry between the Commonwealth and states is not strongly binding, making jurisdictional interests less constrained on that score. Australia runs counter to Burgess’s view that, while ‘partisan harmony’ has a ‘binding impact’ on federations, asymmetry between the central and sub-national governments has a centrifugal effect leading to support for decentralising reforms (1993, p. 107).

Vertical party-driven policy making does happen, of course, but the evidence appears to be that it does not happen frequently and is restricted to particular policy issues. Generally, state politicians do what is best for their states, regardless of who is in power in Canberra (Weissert 2017, p. 98).⁸² Very few interviewees suggested that party congruence across the Commonwealth and states affected their work to any significant extent; indeed, many argued that individual state interests override political allegiances. One reason for this is because, with federal funding a zero sum game, finding more Commonwealth money to appease a premier might require a reduction of funding for other policy areas that one’s cabinet colleagues consider a priority, or cause a reaction from other premiers, regardless of their political orientation.⁸³

Given the complexities explored in the previous chapter, Weissert’s conclusion that it is simply a case of ‘states against the Commonwealth’ appears simplistic. Rather, the balance between adversarial/coordinate and collaborative/concurrent objectives and interests described there plays out more generally in the way relations between the political and administrative arms of the executive inform intergovernmental management.

The simplest manifestation of these relations in intergovernmental management is one where

⁸² A recent example saw a ferocious attack by South Australia’s Labor Water Minister on the Victorian Labor Water Minister over the Murray-Darling Basin Plan; a ‘remarkable initiative commenced by a coalition government ... sealed by a Labor government and agreed to by all the states, with their varying platforms and regional interests’ (Hamilton & Kells 2019).

⁸³ A notable exception raised in the interviews was the disagreement in 2018 between Labor states, who wanted the development of national employment standards to include provisions for domestic violence leave, and the opposition from Coalition governments in power in NSW and the Commonwealth.

officials are directed to pursue a course of action. For example, in the bilateral negotiations over streamlined national processes for environment assessment and approval, state administrations were haggling over the extent to which they would be required to change state legislation to deliver the outcomes COAG was seeking.

The Queensland government officials were just given directions by their government to get on with it and do it. Their government decided, ‘Yep, we’re up for this.’ Their Premier and their minister just said, ‘Just fucking get on with it.’ I think that made a significant difference to their willingness to get on with it. They didn’t get that in New South Wales and that made things significantly harder. (Interview 27, Commonwealth line department)

In the case of domestic violence policies, political divergence, rather than congruence, became a driving factor in the reform process, as the Howard government pursued policies that circumvented the role of the Labor states.⁸⁴ This divergence disrupted what had been collaborative working arrangements amongst officials:

it became difficult to navigate those things, and the Commonwealth definitely made decisions to go directly to local entities rather than necessarily have conversations and funding coming through state and territory governments. The meetings that guided Partnerships Against Domestic Violence became more and more fraught. You had a point in time where every jurisdiction was Labor with the federal government being in the coalition. So you can just imagine the big ‘P’ politics operating in that. (Interview 31, State line agency)

The Westminster conventions directly inform the practice of intergovernmental management. Officials describe their role in terms of the loyalty they offer to the government of the day, whose broader policy choices inform the subsequent negotiating stance taken by officials. As I noted above, even the principles set out in the IGA FFR may be subordinated to the government’s political directions if so directed.

Political direction setting also extends to the detailed and technical aspects of the policy process. Ministers are not only required to sign off on the communiqués that record COAG meeting decisions, they are also actively involved in drafting them, working with senior departmental representatives on the wording that they hope encapsulates their preferred outcome.⁸⁵ Some Ministers are known for doing so in discussion with their interstate counterparts. They are also involved in developing and agreeing their negotiating stance before the COAG meetings and, if the matter is one that involves other portfolios, they may take that

⁸⁴ The Partnerships Against Domestic Violence program was announced by Howard in November 1997 at the National Domestic Violence Summit attended by all Heads of Government.

⁸⁵ This is an example of the important role communiqués play in translating the coordinative discourse within the executive to communicative discourse between the collective political executive and the public.

to a jurisdictional cabinet meeting beforehand.

So you'll say to the minister, 'To what extent do you want me to go hard in this meeting?' around some of those issues you know they're fighting their own agenda about, and get a lay of the land. But you've got to be an official that feels comfortable in actually asking that question of your minister and getting their backing. (Interview 31, State line agency)

The political stance taken by ministers and chief ministers can significantly restrict the negotiation options open to officials, particularly when they make commitments highly public. Commonwealth officials complained that

there are times where we don't have room to move. That doesn't win us any friends in the states when we say 'We can't move on that,' because they say 'Well how can you do that? You've agreed to do this, and now you're suggesting something which is different to it'. That's one that we can't engage on. There's always room for them to refuse to sign up to something, for their political masters to protest. (Interview 2, Commonwealth central department)

In the case of the NDIS, for example, the then Prime Minister's public criticism of a state government for holding back on a national scheme obtained that state's compliance, but undermined relationships between the relevant bureaucrats.

Equally, however, the Prime Minister's commitment limited the options available to her own Commonwealth negotiators as well.

Gillard went out publicly and said, 'We're going to do this.' Well, we had just set the terms of our defeat with states and territories. We had our riding instructions written for us, but, more particularly, they'd been made public, and the states then were emboldened. So what had been a state problem, not providing services to people with disability, became a Commonwealth problem. In one fell swoop she transferred responsibility of this issue from the states to the Commonwealth. We became term-takers from the states, and they extracted the most extraordinary terms from us. (Interview 42, Commonwealth central department)

The relationships between departments and ministers may override the collaborative tendencies I noted earlier between central and line departments. While central departments may take a whole of government perspective on particular policy issues or even on the relationship overall between a state government and the Commonwealth, that view may not be shared by a particular minister who wants to push a particular line.

This counterweight to the role of first ministers, treasurers and their departments mitigates, to some extent, the criticisms of 'executive federalism' that see COAG's operations as driven by powerful central agencies and the primacy of a 'whole of government' approach to policy issues (Anderson 2008, p. 506). In practice, as I have shown, neither central nor line department perspectives are homogenous or consistent, and the role played by the central departments must

be more deft and facilitative than directive, steering cautiously through situations where ministers have strong views about what they want to see in agreements. As one central agency official put it,

Portfolio ministers have policy responsibility for agreements. We don't typically get involved in that. We can provide guidance and advice on the side, but we have to work within the framework; their departments are the connection between the framework and us, and what the minister's trying to achieve. And so there can be this constant movement all the way along until we reach a landing spot. (Interview 1, Commonwealth central department)

The interview data highlights a more general point about the strong self-identification by officials as ‘technocratic trustees’, in Hood and Lodge’s term,⁸⁶ reflecting their role as ‘impartial experts or technocrats making decisions on behalf of society as a whole rather than according to the interest of any single lobby group’ (2006, p. 39); or, in this case, as the technocrats in charge of making sure the federal system operates effectively rather than in the interests of partisan politics. This was a perspective common to all intergovernmental managers, whether in the Commonwealth or states, and whether they were in central or in line departments.

For example, officials frequently expressed discomfort and impatience with the political dimension of their work. One official described the political tensions between ministers (of the same government) that emerged in a working group:

it was awkward, actually, that it played out in front of officials, too. It was a bit untidy. It would have been preferable had they had the opportunity to have a quick meeting in the cabinet room or something like that and have a discussion about it rather than have this horse trading in front of officials who were trying to draft bits of the communique and wrap up each session of that COAG meeting. (Interview 21, Commonwealth line department)

I will come back to this stewardship role in more detail in the discussion of intergovernmental management as an institution in its own right at section 5.6.1 below. My point here is that a large part of the craft of intergovernmental management is exercised in support of making the system work *despite* the politics, as well as in the direction set by politics. Indeed, officials expressed a distaste for the politics of the process.

Your jurisdiction might be advancing a proposition that is largely illogical, not evidence driven but is fundamentally something about the politics of it. So you then can't ignore that in your contribution to the debate. But, equally, you are looking for a pathway to the resolution of the issue rather than simply amplifying the politics around whatever the issue is. Politics always, of

⁸⁶ Hood and Lodge associate technocratic trustees with the German bureaucratic tradition; it is interesting to consider whether the traces of it I detect here reflect both German and Australian federal traditions.

course, influences positions, but people respect the institution of COAG. (Interview 18, State central department)

Officials adopt a range of strategies to conserve this space and keep it open for communicating and negotiating, another example of the order-preserving innovation described in Chapter 4. As I have illustrated in the discussion of agreement-making, an important process is the communication channels and networks that operate between peers. Some officials describe their roles as being a mediator between political executives.

As much as I can I try to keep the dialogue open with the Commonwealth to try and work through what's really important from their perspective and what are their non-negotiables and then try and work through with our Premier and his office what is not negotiable from their perspective and see if we can reach a middle ground. (Interview 19, State central department)

Another approach is by drafting agreements and decisions in a way that leaves them open for negotiation, rather than closing them down.

A third approach actually drafts ministers into service. Occasionally, officials will get their ministers to work with their counterparts in the other jurisdiction to overcome local blockages.

I was on the phone several times with the minister himself in the lead-up to COAG drinks the day before COAG and he basically used his personal relationship with the then Victorian Premier, went up and said, 'You know, we're just about to land our MOU. This is the final sticking point. If I give in on this point will you agree to that point?' He could do that because I had given him the latest from our negotiations with Victorian officials. The Victorian Premier was a bit cornered and said yes. Minister called me and then I relayed it back to Victorian officials saying, 'It's a done deal with your Premier.' (Interview 22, Territory central department)

5.3 Intergovernmental committees, working groups and meetings

5.3.1 Background

In addition to the formal committees that underpin COAG, such as the Senior Officials and Deputy Senior Officials Meetings, a highly diverse landscape of committees, meetings and working groups carries out functions in relation to particular areas of policy and regulation.

Simeon's early study of intergovernmental management in Canada drew attention to the importance of this sub-stratum, describing the shared backgrounds and experience of their members and the resulting 'tight-knit group with an esprit of its own' (1972, p. 135). Warhurst similarly noted the 'innumerable' contacts between Commonwealth and state governments in Australia (1983, p. 2).⁸⁷ Such bureaucratic *esprit de corps* means that officials are motivated

⁸⁷ Parker's comparative study of a number of federations similarly notes that Australia, along with Canada and

to find agreement and sort out minor disagreements; it means that governments are fully aware of the others’ positions, leading to better preparation for ministerial meetings; and it allows for a build-up of consensus on future policies.

5.3.2 The norms and conventions of intergovernmental committees and meetings

The interview data suggested five distinct functions for this layer of the intergovernmental bureaucracy.⁸⁸

First, meetings are a conduit for information to be gathered and fed into formal federal processes. Line departments are able to glean intelligence on positions and sticking points from their more frequent contacts with their colleagues in the other jurisdictions; this intelligence informs the central agencies’ strategies and priorities, and highlights areas of potential discord that can be addressed before the formal ministerial meetings occur. Conversely, these meetings, particularly within a particular jurisdiction, are an opportunity for the central departments to inform their line department colleagues of the formal rules of a particular negotiation process, and of the political constraints and dynamics that shape negotiating positions and tactics.

More generally, almost all of the committees and working groups consciously set aside time for sharing and comparing policy-relevant information, often in a ‘Chatham House’ format and at the dinners that accompany meetings (I will have more to say about these dinners shortly).

Second, committees and working groups are a venue for establishing cross-jurisdictional positions and alliances, particularly for the states. For example, officials from the state central departments regularly meet before the formal SOM or Deputy SOM to make joint decisions about briefing their ministers and adopting a coherent states’ points of view. Similarly, a meeting of state and territory Treasury officials always precedes the Heads of Treasury meetings.

It’s often quite short, possibly informal. It might be something they do before dinner prior to having the conversation with the Commonwealth. They might agree, for example, what state is

Germany, possesses ‘a vast network of forums’ facilitating agreement-making (2015, p. 197); more recently, Elijah noted that ‘these working groups and committees are a significant part of Australia’s intergovernmental institutional machinery’ (2018, p. 4).

⁸⁸ This analysis aligns methodologically with the recommendations by Rhodes, t’Hart and Noordegraaf that committees should be studied and their purposes documented as organisational phenomena with their own characteristics as distinct from those of their individual members (2007, p. 209).

going to lead a certain conversation with the Commonwealth and what kind of things they might pursue. They might just try to give each other a sense of what their own governments' priorities are and what they need to get out of the meeting. (Interview 17, State central department)

Third, much of the process work for policy development and implementation is carried out through these lower level frameworks and is then referred back to higher level governance forums such as COAG or a ministerial council. To take one example, the implementation methods that may have been envisaged at the time that a particular national partnership agreement was signed may become overtaken by events or new approaches, rendering the performance management and resourcing regime obsolete. 'Large, more complex agreements can require maintenance during their life' one central agency official noted (Interview 1, Commonwealth central department), and such maintenance is largely carried out through these channels.

Fourth, these meetings are an important opportunity to generate the trust between officials that is needed to reduce the risks of information sharing. Discursive institutionalist literature draws attention to the importance of the institutional and social contexts in which 'coordinative' discourse takes place (eg Gillard 2016; Borriello & Crespy 2015). Even when participants have not, as yet, had the opportunity to develop trust or consensus, what Schmidt calls the 'rules of the forum' (2011, p. 119) help to create a set of understandings that allows work to proceed.

Finally, committees and working groups are an opportunity for organisations to induct officials into the intergovernmental management world, exposing them to the processes and conventions that will govern and guide their work. The head of one central department actually made a point of having junior officials attend the senior officials meetings 'just to see how business is executed. And you graduate.' (Interview 18, State central department).

Official meetings of COAG and its ministerial councils are usually preceded or accompanied by dinners for the senior officials attending.⁸⁹ These frequently happen the night before, allowing deals to be struck or at least negotiations to take place that facilitate inter-government agreement the next day. For the states, dinners are also an important opportunity to develop

⁸⁹ Edwards and Henderson had already noted this as a feature of COAG's operations (1995). My findings here reflect broader developments in the literature on policy transfer processes that take place in a variety of what McCann and Ward refer to as 'situations,' including temporary settings such as informal dinners (2012, p. 329). Inwood et al. (2011) note the importance of these dinners for building strong intergovernmental capacity, while the Davis and Silver study noted the importance of Heads of Treasury dinners for reaching agreement (2015, p. 476).

their perspective on a policy matter before negotiating with the Commonwealth.

Most of the formal business used to get done at the formal dinner. And I used to have to stay sober enough to make sure I got the notes down to keep the decisions. (Retired senior official, Interview 4).

More generally, dinners are an opportunity for an off-the-record sharing of problems or information, or simply a wide-ranging discussion:

because it’s motivated by the fact there is a formal meeting, but it’s informal. We’re just going to chew the fat about what Brexit and Trump and income inequality mean. There’s no outcome from that, but it’s actually critical because it’s us connecting as a group of people who might collectively have to do something together and understanding where we coming from and building a better relationship. (Interview 10, State central department).

However, these dinners are not always harmonious affairs, and may presage policy differences between jurisdictions. One very senior Commonwealth official described being invited to a dinner to find it was ‘a beat-up session on me which was actually the most unfair interaction’ (Interview 41, Commonwealth line department). Notwithstanding such tensions, in which ‘hats are partially off; they’re never completely off’ (Interview 10, State central department), dinners play an important role in building personal relationships and generating trust between officials.⁹⁰

It was interesting to note that some interviewees felt that the abolition of some ministerial councils, as discussed at section 4.3.3 above, had resulted in a diminution in the number or status of such meetings. This raised the risk of an associated attrition in the collegiality amongst this group of officials, as well as the impacts on the work program.

All the committees and meetings reviewed here are physical spaces which, on the surface, appear to be unremarkable and prosaic. However, they are infused with protocols, routines and conventions that reveal deeper dynamics about the distribution of power and interests across the system, confirming Simeon’s early reference to such interaction and the importance of personal relationships in the Canadian system (1972, p. 135).

For example, meetings are usually arranged to place the Commonwealth at the head of the table, with NSW and Victoria on either side, reflecting the pre-eminence of those states’ populations and economic size. As one official from a small jurisdiction noted,

The name tags are distributed, people are seated, and you know there’s a kind of most powerful

⁹⁰ Replacing dinners with video or teleconferences was generally considered a markedly inferior approach.

seat and a least powerful seat. I'm always in the least powerful seat in the room, right down in the corner. So if you want to actually say anything and engage with the person who's chairing the meeting, you need to lean sideways and talk on an angle (Interview 22, Territory central department)

In fact, this embodiment of the federal hierarchy in seating arrangements annoys officials from smaller jurisdictions, as it tends to obscure the leading role they may play in policy processes. As one official from a smaller jurisdiction put it,

One of the things that always drove me crazy was that the Commonwealth always does everything in order of size. You know that thing about New South Wales carrying the day, they always do at every meeting and even in the way tables are set up for meetings, I found it really infuriating, it was so ingrained there and even if we were doing all the work on the modelling and leading the whole conversation, we get put at the end of the table. (Interview 38, State central department)

Two key roles for change agents emerged from the dynamics of intergovernmental meetings. First, individuals exercise leadership in establishing the degree of formality around meetings, given that this is not determined by reference to a formal framework. Individuals may persuade their colleagues of the benefits of moving to less formal arrangements and processes, allowing for a debate over policy that is less constrained by political or jurisdictional interests.

Conversely, officials may also help to turn less formal meetings into something with more structure and process. For example, officials turned an informal set of meetings in the area of science, technology, engineering and mathematics teaching in secondary schools into national working parties with formally minuted and resourced action plans.

It's really quite organic. It's not like a system that's established, but it comes out of opportunities like roundtables. For example, one I went to one in Darwin focused on the state strategies, what was working, what we were seeing, how we were getting the lift, and from there, national working parties have been established to continue driving that work. (Interview 37, State line department)

A second key role for officials is in the way they discharge their duties in running these meetings and making them efficient and effective. The capacity to exercise such initiative clearly depends on a number of factors, such as the individual's personal standing, the likelihood they have primed other states beforehand, and, of course, their minister's views. While some of these rules are indistinguishable from good meeting etiquette generally, a distinct set of issues arises from the federal settings for these meetings, and the task of allowing discussion to reflect federal concurrency in distinction to the hierarchical nature of formal meetings noted earlier:

when you're looking for consensus on complex topics, then it is around how you facilitate a conversation to have voices heard, to be able to synthesize the information and where you actually

insert your jurisdiction’s perspective. (Interview 28, Territory line department)

Many officials commented on their role in chairing or attending intergovernmental meetings as an important venue for the exercise of their skills and agency as intergovernmental managers. Part of this skill set involves giving other jurisdictions the opportunity to bring their views and interests to the table, without losing sight of one’s own jurisdictional objectives (the challenge introduces some nuance, at least at this practical level, to the notion of Commonwealth domination). For example, one senior Commonwealth bureaucrat has a technique for meetings she chairs where she deflects the risk of a veto vote by a state by allowing it to indicate where political authorisation will be needed:

I establish a code, an agreed signal that an issue is a hard barrier for a particular state, and may require approval from up the political chain, either formal or informal testing (Interview 4, Commonwealth line department).

Another official described how, as chair of a committee developing a major national health policy, she deliberately distanced herself from the Commonwealth delegation, so as not to be seen to be ‘prosecuting their arguments from the chair’ (Interview 21, Commonwealth line department).

Officials involved in domestic violence policy noted the difference that a change in the chair of the working group had made:

there were at least three reps from every jurisdiction. It did flounder for a period of time, but then the Commonwealth changed who was chairing it and that brought a high degree of order and outcome focus at that time. Personnel is critical. (Interview 38, State central department)

Senior officials who have developed a longstanding reputation for sagacity and bipartisanship in a federal policy field may play the role of ‘technocratic trustee’, leveraging the gravitas they have earned to smooth the way to a decision. One official, for example, described her ‘non-verbals’ and whispered confidences at ministerial meetings as a way of reassuring ministers from other jurisdictions to facilitate an outcome:

if my minister is saying something and others ministers are not trusting what they’re saying, I just nodded and they’d know, ‘No, no, that’s believable.’ And then I might say to my minister, ‘Can I trot round and talk to the New South Wales minister because we could probably get them over the line if I explain what’s going on?’ They’d say yes, I’d crouch down at the table and whisper to them and to their Director-General, my colleague, and things might happen. It’s something that goes on amongst the players in a room which, over time, means you can work in ways that are really very, very subtle. (Interview 41, Commonwealth line department)

A key convention for ensuring successful meetings generally can be summed up in the phrase

‘no surprises’; that is, much of the work that goes into a meeting is about identifying and marshalling sources of support, and notifying one’s colleagues in other jurisdictions of the approach one wishes to take, even if it is not shared.

If you come with a position that nobody is particularly invested in or familiar with, it’s unlikely to be a fruitful conversation. A lot of the work of senior executives or senior officials would be about making sure that they’ve got support to be influential in those meetings. (Interview 17, State central department)

Given the Commonwealth’s dominance of the policy agenda, and the risks (as noted in section 4.4.2) that a shift in the Commonwealth’s position can expose the states to the costs of changing programs already underway and committed, ‘no surprises’ by the Commonwealth was considered a particularly important condition for meeting success:

if you start with 12 months of work that has been done in the Commonwealth that we didn’t know about, then it’s probably going to be a difficult conversation. The conversations that start earlier and are more open in nature about how we achieve a shared outcome I think are the most constructive ones. (Interview 16, State central department)

An important convention that foreshadows the discussion in this chapter of intergovernmental management as an institution and ‘discursive space’ in its own right (see section 5.6), isolates the committees and working groups from the politics between Commonwealth and state politicians. It is accepted that what happens politically may undercut efforts at collaboration:

whatever the agenda is that I may have been trying to take into a senior officials meeting, there could be a political overlay that just undercuts that. Nor are you held to account by your peers for your inability to ultimately deliver. You’re expected not to get it wrong all the time, but there is an acceptance that sometimes, as they say, stuff happens (Interview 18, State central department)

Similarly, officials are there to serve and assist their ministers, but this is not generally seen as a barrier to the development of trust and open communication between them, particularly where gaming behaviour can be mitigated through an ‘open show of one’s hand’:

I’ve never, ever stepped outside being completely loyal to the government of the day. So I’m not saying that I would have shared information that I shouldn’t have—not ever. It’s just the way you behave. You can say, ‘Look, I think the Commonwealth government’s disposition will be x,’ or, ‘I think it will work better if you guys think about it from this perspective’ or, ‘No, no, you don’t need to react like that because what’s going on in the Commonwealth is x, y, z’—often it was a matter of translation of how the Commonwealth works which, of course, is an arcane and dark business. Somehow that openness seemed to engender a good sense of trust. (Interview 41, Commonwealth line department)

5.3.3 Agenda-setting in a federal context

Agenda-setting is a critical element in policy processes generally, and as a specific bureaucratic

function in intergovernmental management. Kingdon’s ‘multiple streams’ model pays much attention to agenda-setting. In that context he distinguishes between a *governmental* agenda that captures priorities and a *decision* agenda, the specific list of subjects within the governmental agenda that are to be decided (Kingdon 2003, p. 4).

Translating this to the federal system, agendas at COAG, its ministerial councils and lower working groups and meetings across the federation are an important device for signalling what the priorities are for the different levels of government and the differences between them, and for sorting when and how such priorities are to be handled, if at all. Agenda outcomes are reflected in COAG’s communiques, intergovernmental agreements and the work programs of subordinate working groups. Apart from these outputs, agenda-setting as a process also reveals something about the status of intergovernmental relations at any time, how well or poorly they are conducted and why they have taken a particular direction.

The classic perspective on agenda-setting in the Australian federal system, captured in Deakin’s metaphor of crushing ‘chariot wheels,’ argues that the Commonwealth’s fiscal domination is mirrored in its capacity to dominate both the governmental and decision agendas, particularly at COAG and its ministerial councils (eg Phillimore 2013, p. 232; Kildea & Lynch 2011, p. 104; Hollander & Patapan, 2007, p. 287). For example, Jones points out that the Commonwealth’s drive for national consistency in education curricula and standards led to it raising 42 per cent of the agenda items for the ministerial council on Education, Employment, Training and Youth Affairs⁹¹ (2008, p. 166). Consequently, reviews of the federation often recommend a greater role for the states in putting items on COAG’s agenda (for example, Department of the Prime Minister and Cabinet (Australia) 2015, p. 3; Australia. Parliament. Senate 2011, p. 50).

The experience of many practitioners supports this general contention about the Commonwealth’s dominance:

It’s very difficult to get some things on the agenda at COAG because the Commonwealth just won’t agree to put it on. They just don’t want to talk about it. You can advocate through officials; you can have first ministers write to the Prime Minister, but if they don’t put it on the agenda and they don’t give you the space, it doesn’t get run. (Interview 16, State central department)

At one intergovernmental meeting of officials the facilitator wrote the words ‘climate change’

⁹¹ 1993-2009

on the whiteboard. Reflecting the then Commonwealth government's strenuous opposition to climate change policies,

within about 20 minutes a request came through from the Commonwealth saying, 'Please, can you erase that. We don't like that, we don't use that word.' (Interview 13, State line agency)

Practitioners also pointed out that the Commonwealth's dominance is reflected not only in what items are on the agenda, but those it keeps off the agenda, those it relegates to later meetings, or how they're to be dealt with once they are included:

The Prime Minister can determine whether they want to do it on a wholly retail basis or whether they want to deal with it as a strategic discussion. They can deal with it on the basis of do they want experts to come in and do briefings around particular matters and things like principals only or officials in the room. There was a period where there were principals only and then officials came in the room under Rudd. (Interview 18, State central department)

Interview data, however, suggests that the agenda-setting process is more complex, despite the Commonwealth's undoubted pre-eminence. State premiers can be the source of, or a vital ally in major reform programs, such as the role played by state premiers in the Hawke Government's 'Closer Partnership with the States' in 1990 (Hollander & Patapan 2007, p. 284).

A number of analysts have also pointed to the mutual benefits derived from cooperative agenda-setting exercises. For example, Davis points to opportunities afforded by the Closer Partnerships program for the Commonwealth to expand its sphere of influence, while the states gained a greater say on the policy agenda, with mutual benefits for national efficiency and the reduction of duplication (Davis, 2017, p. 149).

Many interviewees recognised that it is in the Commonwealth's interests, as well as the states', to include alternative agenda priorities and approaches, allowing for a degree of 'horse trading'. Consequently, the actual agenda for COAG is less of a Commonwealth-only exercise than many analysts suggest:

While the final decision on the agenda for a COAG meeting is the Prime Minister's, he or she will also be responsive to the states and territories - if they want a matter discussed, then it will often make its way onto the agenda, or the Prime Minister will propose an alternative way in which that matter can be progressed. So there is an amount of the agenda setting which is a collaborative exercise. (Interview 2, Commonwealth central department)

Representatives from the central agency teams responsible for intergovernmental management reported paying a great deal of attention to COAG's discussions as a guide for them on general directions and priorities, and on state government priorities and views to be considered for meeting agendas:

Part of our role is to understand what all of the state governments are doing. So we keep a watching brief on each one of them, so that we can suggest to the Prime Minister things that you could include on a strategic agenda, or a forward plan. We could say ‘These things are of particular interest to the Commonwealth, these things are of particular interest to the states and territories, here’s where we’ve got a nice overlap.’ (Interview 2, Commonwealth central department)

More collegiate agenda-setting happens at lower level meetings; while the Commonwealth tends to dominate COAG itself and ministerial councils, this dynamic is more balanced in less formal ministerial meetings, working groups or meetings between authorities and agencies across the federation that are not directly connected to a COAG or ministerial council meeting. Agendas for such meetings are frequently developed by discussion and negotiation amongst the supporting senior officials’ group. For example, the agenda for the environmental ministers’ meetings (not a formal ministerial council) is constructed with more collaboration than is involved for the formal councils:

Last Tuesday we sat down with the minister and said, ‘here is the draft ministerial meeting. We think these items should be on there from Victoria. We think the other items should be there, but maybe this one from, for example, South Australia, we don’t actually think that’s worth going with yet.’ Then the Commonwealth will have a view about that and they’ll pull stuff off they don’t agree with, and there’s a bit of negotiating. At the end of that we’ll say, ‘Here’s the agenda for the forthcoming ministers meeting,’ and we agree to that. (Interview 20, State central department)

A similar dynamic was reported (at least from the Commonwealth point of view) for the Heads of Treasury meetings.

The Commonwealth would do the first draft of an agenda. The states or territories were free to come back with amendments and deletions and additions. My recollection is that invariably we’d take them on board. If someone said, ‘I want to discuss this,’ we’d say, ‘Fine, no problem. If you want to knock up a paper to get the discussion going, send it off to us and we’ll circulate it.’ (Retired senior official, Interview 4)

Another aspect to this structural dimension involves the de-politicisation that officials use to maintain or further policy debates. While such de-politicisation is impossible to effect at COAG itself, even when the federal and state parties are aligned, this can happen at ministerial councils and meetings through the way agendas are constructed and work programs implemented. For example, one official described discussing the possibility of putting the issue of interstate trade in industrial waste onto a ministerial meeting agenda with a colleague in another state whose minister didn’t support the discussion.

And he said, ‘That would be great. That is an item I can’t put on the agenda, but I’d be relieved if another jurisdiction put it on the agenda because it would put the pressure on our state to justify its stance that says we won’t have a landfill levy.’ (Interview 20, State central department)

Consequently, the agenda-setting process is not always just about the interests at stake. Once the political process has set the broad parameters, the craft of agenda-setting is about delivering a negotiated outcome: determining whether particular agenda items are ready for discussion or still need work before they can be presented, whether items have sufficient priority for the limited time available, whether the agenda items are pitched at the right level for a discussion, and the degree to which they encompass aspirational goals (this last point risking contention where the states feel they are being redirected away from their own preferred objectives and approaches).

5.4 Policy work

5.4.1 Policy drivers and constraints

As discussed in section 5.2, the policies and strategies set by Prime Ministers, Premiers and Chief Ministers and their respective portfolio ministers form the primary framework for policy in the federal system, and hence a constraint on the agency of officials working on intergovernmental management.

However, the interviews also provided data on a range of other constraints on policy making. Information from practitioners on how they handle these constraints provides additional insights into the two value sets identified in Chapter 4, and their effect on intergovernmental management.

First, policies may be stimulated by specific developments or problems in a particular state or a number of states to which government responds, in line with Kingdon's argument that 'problems are not self-evident...they need a little push to get the attention of people in and around government' (2003, p. 94)). For example, one official noted the importance of the media in generating such priorities:

in the states you have an immediacy of accountability that you just don't have in the Commonwealth. Talkback radio looms large for a state bureaucrat. When I was working in New South Wales government I used to listen to Alan Jones first thing in the morning because I knew that what he said would determine part of my day. (Interview 42, Commonwealth central department)

Pressure groups, private and non-government organisations and stakeholder representatives may drive policy agendas directly or through their influence on politicians. For example, tensions emerged between an informal network of environmental regulators and an industry-led cooperative research centre.

the managing director contacted my agency, complained about me, complained about the network, asked for it to be shut down. And he and I had previously had quite a reasonable working relationship but he just kept hanging up on me. (Interview 3, State line agency)

Another significant constraint on policy making relates to the jurisdiction’s size. This can affect its general capacity to influence federal policies, as symbolised by the order in which state representatives are seated in meetings. But size also affects the resources that can be turned to policy development, as opposed to simply adopting what other states have done.

Organisations also impose constraints on policy makers: senior meetings of officials set out the limits to the discretion exercised by lower level working groups, and central departments set limits to the strategies to be adopted in negotiations by portfolio departments. An interesting dynamic emerges between departments and statutory authorities, given that the latter are less bound by a minister’s direction, and departments need to be mindful that, as one line department official put it, ‘stat[utory] bodies hate being controlled, being told what to do by their parent department’ (Interview 20, State line department). In the case of one of the state environment protection agencies, where policy making responsibilities were moved to the state’s environment department,

there’s quite a healthy tension between us around what policy needs to be driven and what doesn’t need to be driven. Departments respond very well to their minister, but they need to respond also to the circumstances - the environmental need or the scientific need for policy as well, air quality being one of them, or maybe a market that’s not operating well and where there needs to be intervention (Interview 12, State line agency)

A different mindset appears to be required to manage the department-agency relationship, focused less on control and direction and more on a sense of common goals achieved through mutual support:

I’ve had to say to my team here, ‘Our job is to make those agencies successful. Provide clear direction but it’s not based on power. It’s not about that. This is about what should we be doing to make that particular stat entity successful.’ (Interview 20, State line department)

Organisational cultures can act as a constraint, and may extend across jurisdictional boundaries. For example, particular department types or roles may create a community of interest, or at least similar outlooks, that are shared across Commonwealth and state boundaries. Such cultures may also involve a meeting of minds that begins to build consensus on an issue:

With treasuries, there’s a strong corporate culture which has brought Commonwealth and state Treasury officials together in a similar way of thinking and a fairly open exchange of views. It’s often a rationalist kind of informed view of things that is less political than the views that would emerge out of premier’s departments or PM&C. There is a bit of tension there. (Interview 25,

Territory central agency)

The complexities and nuances I noted in Chapter 4 that apply to the relationships between central and line departments are a salient factor in how officials go about policy making and the constraints they face. Many officials noted the potential tension between portfolio ministers' sharp focus on policies relevant to their portfolio alone, and the broader perspective on the federation that central departments might take on behalf of the first ministers. For example, NSW's role as the 'elder statesman' of the federation and the negotiating stance that central agencies pushed for in support of that role could conflict with line agencies' negotiations on behalf of their ministers.

My relationship with Premier and Cabinet has been, 'Well, it's fine that you want to play the statesman, but my responsibility here is to my minister and delivering services for health.' At times central agencies fall into the trap of thinking that they actually direct us or govern the line agencies. Occasionally we just have to point out to them that we actually don't work for them; we work for a different minister. (Interview 5, State line department)

From a central department point of view, line agencies may not get the bigger strategic cross-portfolio picture in which tradeoffs between policy outcomes are common:

it was very clear that we might not get the perfect outcome that would be our number one outcome on, say, higher education, but if it meant we got the outcome we were after in health, that was the trade-off worth making from a state perspective. You just have to weigh it all up and you have to be clear with the line agencies. (Interview 38, State central department).

From a processing point of view, there is a natural information asymmetry in the negotiation process between central and line departments that acts as a constraint on the latter:

When you get up to the near final agreement stage through a first ministers' COAG process the information that you can share with the line agencies starts to dry up. You deliberately tighten it up, because at first ministers you're looking to take a different view but if you talk to the agency it suddenly gets to the minister and the minister starts bombarding the Premier before you've had a chance to tell the Premier. (Interview 9, State central department)

Longstanding practice in individual public sector organisations generates its own inertia that limits the policy options open for consideration or, at least, complicates negotiations and requires highly iterative policy processes. Many officials commented on the way the states had developed historically different legal or regulatory definitions that obstructed national harmonisation programs (I will return to this in section 5.4.3).

I can remember one state had one definition of 'child developmental delay' and another had another definition, and the Commonwealth was trying to negotiate and facilitate agreement between the two. What's driving that? That's not a geographical kind of thing, but because they had had responsibility for disability for years, they'd developed their definitions of things. All of

a sudden we couldn’t negotiate on the basis of first principles or what had been a logically considered process following an extensive inquiry. We had to cater to these multiple definitions. (Interview 42, Commonwealth central department)

The preceding discussion outlined a number of dominant rules-in use in policy making that prioritise stability and efficiency. Another set of rules, however, sanctions brokerage and innovation in policy and emphasises individual agency in that role.

Officials identified the conditions that allow them to depart from the political priorities of the day, and to focus on longer term, systemic policy issues. This can occur, for example, where the Commonwealth government has not taken a dominant role, either because funding levels have declined or because it is not a high priority for the federal government. In such cases, portfolio officials working in the intergovernmental space may be freed up to work with their counterparts within the jurisdiction, or to work collaboratively across jurisdictions, on matters of specific concern for their state.

Moving out from under the Commonwealth’s fiscal and policy penumbra may allow alternative priorities to emerge, and different ways of working that are not prescribed by national agreements:

there’s not like this endless bucket of money where you can just put your hand up to get more. In fact, we’re finding that in delivering transformative projects we need to take new approaches. Engaging the market and engaging the non-government sector is really starting to become flavour of the month. (Interview 5, State line department)

Despite their frustration at not having the resources to participate in some of the processes colleagues from larger states were able to pursue, officials from smaller jurisdictions also described such marginalisation as offering an space in which to shape policies of particular relevance to their jurisdiction. For example, one official from a small jurisdiction described working on the implementation of the NDIS roll-out for Indigenous communities:

I’d never done a genuinely collaborative piece of policy work where — out of the glare of the actual formal set piece meetings — you’re actually getting round the table and collegiately doing a piece of policy work to break new ground or uncover insights and come up with better ways of doing things. (Interview 22, Territory central department)

Even on matters that are on the national agenda, smaller jurisdictions may have the ability to test policies and approaches more easily. For example, officials from South Australia described their role in helping the Northern Territory and Tasmania to adopt their practices on domestic violence. Similarly, South Australia took the lead in developing a national scheme for the certification of practitioners in the assessment and remediation of site contamination.

The 'two rule sets' of stewardship and serial loyalty introduced at the end of Chapter 4 are an important source of legitimisation for moving beyond the boundaries of sanctioned policy development.

A great deal of policy work is conducted outside the boundaries of formally mandated or commissioned work. Such activity is carried out in all jurisdictions, large and small, Commonwealth and state; all organisations, both central, line and in agencies; and for all policy types. Such work has, as its focus, the identification of the optimal policy options for design and implementation without reference to any particular set of political priorities or strategies, at least as a theoretical exercise:

It's that capacity to not ignore the political realities or ignore the fact that your political masters may have a particular perspective but to suspend that where you can and engage in a genuine dialogue with your colleagues, often on a no-commitments basis, so that there's just a greater mutual understanding of the pressures each are under. Public servants step back from the political fray so they can try and bring the genuine state interests or the national interest to bear and try and work out a solution. (Interview 10, State central department)

This apolitical stance informs much of the negotiation process, whereby officials maintain channels of communication with one another to ensure as much information is available as possible to reduce gaming behaviours. The success of these endeavours depends heavily on the trust they have in one another, often born from long interaction over many years or negotiation processes. Such trust also depends on officials construing their role as honest brokers rather than jurisdictional advocates, or at least layering the latter role over the former.

I try to keep the dialogue open with the Commonwealth to work through what's really important from their perspective and what are their non-negotiables and then try and work through with our Premier and his office what is not negotiable from their perspective and see if we can reach a middle ground. But also advising the Premier where we think the issues are unlikely to be supported by the states and territories and whether or not from a strategy perspective it's the best argument or fight to have across the myriad of issues COAG has to deal with. (Interview 18, State central department)

Building policy alliances from existing inter-jurisdictional networks is frequently a way of operationalising a depoliticised policy process. Such networking expands the range of actions that might be available to an official within his or her jurisdiction: first, by generating support for a policy strategy from the outside, as it were; and second, by giving officials in smaller jurisdictions a much greater ability to effect policy change than they would otherwise have. In this way, networks subordinate what March and Olsen call the 'logic of consequences,' the expected utility, benefits and disbenefits of some course of action, to a logic of appropriateness

based on values and outcomes (March & Olsen 2009a, p.10).

Another technique officials use to circumvent political sanctions is to change the process that applies to a particular piece of policy development. For example, an important strategy many officials adopt for sensitive policy debates is to separate them from the development of specific agreements. For example, an official persuaded her colleagues in other jurisdictions to think more openly about competition policy by separating those discussions from formal negotiations around an agreement.

So we didn’t say, ‘This is to prepare us for the negotiation on the IGA.’ We said, ‘Look, this is completely separate. This is an unrelated piece of policy work that we think is really important.’ We were able to persuade New South Wales to it because they could see that it might actually help their future negotiations. (Interview 22, Territory central department)

One federal official recalled working closely with Treasury officials in one of the states to consider options for federal reform outside of the formal processes and ‘under the radar’ of the relevant politicians:

[The state officials] had done a lot of work with their own Treasury. They’d come up with a view around how we might reform Commonwealth-state relations. So they had worked pretty closely with us behind the scenes. I wasn’t telling ministers or treasurers about this; this was just sort of happening, cooperating and working together. They wanted to send papers to us. We’d comment on them, we’d criticise them, critique them, agree with them, whatever. (Retired senior official, Interview 4)

The legitimisation for this stewardship (in institutional terms, the ‘logic of appropriateness’ [March & Olsen 1989a]) is a matter I will address more fully in the next chapter, as it appears to arise from the respective officials’ commitment to the federal system’s outcomes as a whole, rather than any particular political, jurisdictional or organisational mandate.

Most bureaucratic activity, of course, takes place somewhere on a spectrum between the two poles of highly mandated and constrained action at one end, and highly discretionary and individual strategizing on the other. Uncertainties about ends and how to achieve them may require a more iterative mandate that only emerges over time, rather than at the outset of a linear policy sequence, as was the case, for example, with the latitude Commonwealth officials were given by the then Minister for Disability Reform to design the NDIS

There was agreement about the goal and what the system should like and then quite a degree of autonomy. It was actually quite unusual but I think it was necessary because you can’t handle negotiation by checking every point. We were only getting to the next point well enough so that you could go to government for the next set of decisions. It was a very iterative process. (Interview 26, Commonwealth line department)

5.4.2 Briefing

Apart from the bargaining and negotiation roles examined in the preceding chapter, the preparation of briefings is another task for intergovernmental managers that offers scope for individual agency. One state government IGM specialist estimated she was required to prepare briefings for around 40 meetings a year, or virtually one for every week of COAG's work-year.

Three rules around briefing were salient in the interviews, as a way of securing better outcomes from ministerial and the associated senior officials' meetings. The first is that, as far as possible, debate and discussion should take place before the ministerial meeting; only the most important and intractable issues should be on the table.⁹² As I have noted, the communiques are usually already partially drafted by the time of the meeting.

The things should have been settled beforehand and the fight should have been had to allow them to do their political stuff so that they don't have to stand up and wax lyrical. So you should have done your bits beforehand. It's only when someone's been really, really, really naughty that you'd address that at council. (Interview 34, State line department)

Second, the briefing process is another opportunity to develop coalitions in support of policy positions, and particularly of course for the states to establish a common position in relation to the Commonwealth. Thus, for example, state officials used senior officials' meetings to develop a common position on the contamination of department of defence land across the country, even though individually they had had little success in engaging the behemoth Commonwealth department.

Although HEPA is quite an informal grouping we will work as senior officials in a common way to similarly brief our ministers so that we've got the best chance of an MOU that doesn't pick us off one by one but has a common approach across it. (Interview 12, State line agency)

This point should not be overstated, however. As we will see in Chapter 6, the states adopt different 'personas' in the federation, and New South Wales in particular likes to play a 'statesman' role that generally adopts a less confrontational stance.

Third, in sharing information with one another on their Ministers' or their jurisdictional positions, as far as possible officials prefer to adopt an open book. This helps to build the stewardship of the overall federal process by diminishing adversarial gaming. Not doing so undermines the interpersonal trust that feeds into effective briefing and network building. Moreover, ministers' and jurisdictional interests are not served by poor preparation:

⁹² This is, of course, a hallmark of good preparation for intrajurisdictional cabinet meetings as well.

if you’ve got a fight to be had, you’ve carefully made sure you’ve done all your homework about what the situation is. You never send your minister in ill-prepared. It would be like a pirate ship with a plank out and at the end of the plank the sharks are circling. (Interview 34, State line department)

Officials took their obligations to keep their interstate colleagues in the loop very seriously. They saw it as incumbent on them to ensure that issues that could potentially arise were signalled in advance to their state counterparts (the obligation did not appear to extend as strongly to the Commonwealth).

The minister may choose to ignore it or the director-general may choose to ignore it, but you’ve at least said what you’re thinking at officials’ level and so the others are warned that your state might say ‘We don’t like such and such.’ You have had to do that. That’s your obligation to do that with your interstate colleagues. (Interview 34, State line department)

Briefing, then, is a highly collaborative process, because good briefing work in the intergovernmental sphere — as it does for briefing generally — requires good intelligence from the other jurisdictions. Ministerial and senior officials’ meetings are almost always preceded by a round of informal contacts between jurisdictional counterparts that feeds into a progressively tiered series of briefings up to ministerial level. These briefings allow individual jurisdictional interests and directions set by the political executive to be put into a broader context through the identification of other jurisdictions’ preferences and negotiating ‘red lines’.

I’ve done a good job if I have taken steps to ensure that there are no surprises for either, say, my secretary or my minister, and I’ve taken steps to either negotiate to get part of a consensus ourselves or to move our positioning to be part of consensus or have gathered the intel to say, ‘I think I need a senior person to call another senior person to get an outcome,’ or we end up saying, ‘Actually, we are going to push this one at the meeting,’ and we’re telling everyone (Interview 15, State central department)

In addition, tiered briefing is a way of progressively identifying and ironing out difficulties so that the next level is only dealing with those issues that could not be dealt with at the lower governance level. In particular, many technical policy issues are dealt with through lower level briefings and decisions, because more senior officials don’t have that technical knowledge.

5.4.3 Data gathering and reporting

Data gathering for policy inputs is, by its nature, a collaborative exercise that requires data sharing between jurisdictions and organisations, particularly where complex social problems involve data generated by different levels of government.

There are two broad purposes for which data is collected and used in the federal system. The first is for policy inputs, such as supporting the work of intergovernmental working groups and

meetings, and providing the basis for comparative evaluation, trials and pilots. The second is to fulfil the requirements of intergovernmental agreements and for performance reporting more generally.

A good example of the difference between the two was drawn by an official who had worked on the evidence base for the Breast Cancer Screening Program and national health funding agreements respectively. The former program was one on which the Commonwealth and states worked collaboratively and productively,

because at that stage we were still trying to demonstrate that regular screening reduced morbidity and mortality. There was money to do that, so the policy and fiscal stars aligned. I thought that's what Commonwealth-state relations was, in my naiveté. And then I moved to work on health funding. (Interview 1, Commonwealth central department)

However, data gathering and reporting is frequently contentious. For example, many officials drew attention to differences in data definition and measurement as a barrier to harmonisation. In the case of waste and resource recovery, for example, SA officials felt the state

leads the table for resource recovery, and we've done some fantastic things and we've got something like about 80 per cent of all waste generated in [state] is recovered. But people interstate believe that we use different metrics, we have different definitions which artificially might look like our data's better than what it actually is. The definitions are really important (Interview 33, State line agency)

Political constraints on data gathering can also hamper the development of a comparative evidence base. For example, politicians are wary of the emergence of public league tables on the basis of comparative data or even the use of data to highlight poor performance that might affect agreements and funding. More generally, state ministers and their officials are wary of the potential role the transfer of data can play in the centralisation of policy.

The Commonwealth has an appetite for data, and their approach has been to compel states to provide it. And, equally, if the Commonwealth was simply to come and ask for it, we would be asking, 'Well, why? If this is the first step in you seeking to tell us how to run policy in a unilateral way' - which has not been unknown - 'then we're not particularly interested in that kind of conversation.' (Interview 17, State central department)

Ministers and senior officials may veto data sharing and modelling where the scenarios and options being modelled run counter to their negotiating position. Even sharing data internally can be risky if the data an organisation has provided for a different purpose is then used to reduce its budget.

There is a sense amongst line agencies that we should keep stuff back because it's better if central agencies don't know too much about our business; only enough to do what they need to do.

(Interview 5, State line department)

Finally, as we saw in Chapter 4, the issue of cost shifting affects data sharing where it is conducted for the purposes of performance reporting.

In summary, there are significant barriers to the use of data for policy development that reflect tensions over fiscal arrangements and/or overlaps in policy responsibilities between governments.

As a result of these barriers, officials described data sharing between jurisdictions, particularly between the Commonwealth and states, as ‘embryonic’, ‘*ad hoc*’ and even ‘archaic’.⁹³ However, many interviewees detailed attempts to overcome these barriers to data sharing that they or their colleagues had made. For example, senior officials in the Commonwealth and states mandated the sharing of data from the Medicare and Pharmaceutical Benefits systems, and data on individual hospitals, even though states risked exposing comparative inefficiencies in their health systems, on the one hand, while the Commonwealth risked a debate about whether levels of primary care expenditure increased hospital costs.

Similarly, a state official described the decision by the head of the Commonwealth Department of Health to depart from his predecessors’ policies and share NDIS data with the states as a ‘watershed’ moment (Interview 11, state line department).

A number of factors were common to these and other instances of a departure from the standard operating model for data ownership. First, such instances usually involve officials who have experience of working for both Commonwealth and state governments, and who, as a result, may have seen things differently from their predecessors who did not have such experience. This interview cohort suggests there may be many such officials working on intergovernmental management, as thirteen of the forty-two interviewees, or just under a third, had worked at both levels (this is a conservative figure as not all the interviewees provided this information).

Second, these officials established processes for gathering, analysing and reporting on the data outside of normal, formal channels and meetings, which they saw as too slow, or too hampered by the politics, to get much done by way of evidence gathering and analysis. This strategy effectively operationalises the distinction between the two purposes of data gathering I noted

⁹³ As noted in section 4.4.2, and by some interviewees, this has not been helped by the abolition of the COAG Reform Council.

above. In the case of the NDIS, for example, officials described a process of actively engaging with the states on detailed analysis and development without mixing these issues up with funding negotiations:

Tactical things, going right back to taws, having all-day seminars on one aspect, and allowing lead states to actually write stuff. We were pretty clear, too, that the other side, the intergovernmental agreement, was much more conflictual and done by economics people and the more Treasury-type people. We ran them quite separately, so it was really clear that there were different conversations happening and that the rules were different. You can't just switch from a consensual discussion about what should the eligibility criteria look like to whether it should be 60 per cent or 59 per cent. (Interview 26, Commonwealth line department)

Third, as with all other policy processes, strong interpersonal relations and trust are a *sine qua non* for data sharing, at least for the evidentiary kind. For example, inter-jurisdictional policy learning is facilitated by trust, particularly where it involves material on less successful implementation, pilots and trials.⁹⁴ Comparative performance reporting may become competitive and defensive rather than leading to collective learning. Consequently, notwithstanding the support formal meetings can provide, successful policy learning operates as a process distinct from negotiations on agreements, and officials leading such work often deliberately differentiate the two streams of work:

Out of the glare of the actual formal set piece meetings you're actually getting round the table and collegiately doing a piece of policy work to break new ground or uncover insights and come up with better ways of doing things. We treated it as not connected to a set piece of the negotiations. So we didn't say, 'This is to prepare us for the negotiation on the IGA.' We said, 'Look, this is completely separate. This is an unrelated piece of policy work that we think is really important.' (Interview 22, Territory central department)

Finally, reflecting the incentives and interests that shape the development of particular policies over long periods, some policy areas have a history that is less fraught, and therefore more congenial to data sharing than others. For example, the Commonwealth's enormous data-collecting infrastructure is a vital resource in dealing with threatened species and other ecological risks that apply across state borders. Leveraging those capabilities requires a common data set and ensuring the states do not build isolated data mapping systems.

In other cases, such as in domestic violence policy, the longer history of states going their own way on social policy has prevented the development of comparable data sets, leading to the establishment of the Australian National Research Organisation for Women's Safety (ANROWS), a not-for-profit independent national research organisation established by the

⁹⁴ The issue of trust as a value is discussed in Chapter Six.

Commonwealth and all state and territory governments of Australia to produce and disseminate evidence for policy and practice addressing violence against women and their children.

5.4.4 Policy harmonisation

A further stage in the federal policy cycle that follows from data gathering and briefing is the process where such data leads national policy harmonisation. A focus for the interviews, therefore, was the extent to which the rules-in-use around the intergovernmental management of policy harmonisation were similar to those that applied to the other policy processes discussed in this chapter.

Processes of federal policy harmonisation have a long history in Australia, particularly through the implementation of National Competition Policy in the mid-1990s (Wanna et al. 2009, p. 13 n.16). Subsequently, in February 2006, as part of its National Reform Agenda, COAG agreed that all jurisdictions would take steps to reduce the burden of regulation, including through ‘reforms that enhance regulatory consistency across jurisdictions’ (Communique of 10 February 2006).

For all its importance as an enunciated federal policy process, some interviewees echoed Fenna’s view that harmonisation, in its coercive forms, points to centralisation and a loss of sub-national autonomy and diversity (2012c, p. 590). Others expressed doubt about the level of harmonisation underway and its prospects. An interesting example of how both views of harmonisation can be held by officials working in similar policy fields emerged from interviews with those working on environment policies. One official working on environmental policies at the federal level expressed doubts about the whole concept:

Harmonisation, I don’t know what that means. It’s hard enough to simplify and make workable these arrangements within a jurisdiction let alone between them. And harmonisation is no goal in itself. All things being equal you’d have similar systems, because different systems implies one’s got to be better than the other. And if one’s better, that’s the one you think would be the model for the others. (Interview 27, Commonwealth line department)

Some officials echoed concerns raised in the Hilmer Report on National Competition Policy ‘that standards may be harmonised at the level of the most restrictive standard, rather than the most appropriate’ (Australia. Treasury, issuing body 1993, p. 198). For example, Victoria is a leader in native vegetation policy, with developed systems of measurement and approval and a system of offsets purchase.

Other states don’t have that. But if you want to have a discussion to harmonise native vegetation

policy nationally, that would mean Victoria switches off all of that because New South Wales and Queensland, by comparison, don't have all that much. (Interview 20, State line department)

At the same time, however, the environment protection agencies through the Australasian Environmental Law Enforcement and Regulators network (AELERT) were developing standardised authorisation training packages for field officers, as a precursor to mutual recognition of field officer credentials. Other regulators described work on lining up processes for contamination assessment, and for listing threatened species across states.⁹⁵ In general, then, it would appear that the more front-line, hand-on the process, the more policy transfer in relation to that process takes place.

We know that we will never be able to sustain and manage the total knowledge that we need to be an effective regulator in Victoria. The example would be the Hazelwood fire. We sought help from Tasmania. Tasmanian experts came across and helped us and they had some equipment we didn't have and we've now adopted it. (Interview 14, State line agency)

Although most officials saw the potential benefits of Commonwealth government support for harmonisation, this was often described as a 'special role' requiring a highly collaborative approach, as distinct from the coercive approach often taken in agreement-making, and the facilitation of an incremental, joint work program that built on the states' expertise. For example, the achievement of a national curriculum was attributed to

a really carefully planned unfolding process of a step-wise approach to those reforms rather than a 'We're just hitting you with these reforms,' whack, and a respectful approach to the states, which was about what's in it for them, what's in it for all of us—the shared objective, not just a piece of Commonwealth architecture that's going to be whacked on them. It took a long time to get there; it took a couple of years. (Interview 41, Commonwealth line department)

Officials working on environment policy similarly supported an incremental, bottom up approach that took harmonisation out of areas where politics could derail the process:

[AELERT's chairman] really affirmed the role of AELERT to stay away from legislative alignment and work on practice, because they would be much better off working on how we put these things in place and working on how we actually regulate. Even at the end of it, I don't know how much alignment there is. A lot of the detail in the codes of practice hasn't been aligned. (Interview 33, State line agency)

Much of this lower-level work is a product of informal networks, as officials sharing information discover opportunities for harmonisation efforts. In the Contaminated Environments Network, for example,

⁹⁵ This work follows some, but not all, states attaching their listing processes to criteria established by the International Union for the Conservation of Nature.

As we got to know people who worked across the jurisdictions, we realised how ridiculous it was to all be doing the same work in a different way and different standards and different approaches and different requirements. So we’ve tried to harmonise it, which is the buzzword. (Interview 32, State line agency)

5.5 Personal networks

5.5.1 Background

Some 35 years ago, Wettenhall noted ‘the great variety of arrangements, formal and informal, which has developed...to provide meaningful linkages between the three fixed layers of government, and the growing awareness of network management which emphasizes the dynamic nature of the IGR environment’ (1983, p. 179). Since intergovernmental management emerged as a specific discipline within federalism studies, networking has been identified as an integral component of the craft (eg Wright 1997, p. 421), to the extent that some authorities simply describe intergovernmental management as ‘a series of network relationships’ (McGuire et al. 2013, p. 6), and a ‘process of solving intergovernmental problems ... through the creation and use of governmental and non- governmental networks’ (Wright & Krane 1998, p. 1162).⁹⁶ More recently, the survey by Inwood et al. of officials working on intergovernmental management introduced in Chapter 2 found that officials regarded their informal relationships as the most important contributor to intergovernmental policy capacity (2011, p. 417).

It is not surprising, therefore, that the interviews uncovered a dense, layered complex of networks to which all officials who work in intergovernmental management belong, and which figures prominently in their view of the landscape. Some of these networks are mandated and operate under formal and established rules; others work informally, without sanction or agendas, but like the formal variety provide critical avenues for transmitting information, as well as an opportunity for the development of interpersonal trust.

5.5.2 Formal and informal intergovernmental networks

Both formal and informal networks play an exceptionally important role in generating,

⁹⁶ This development in IGM studies parallels the move from traditional direct delivery by governments towards networked delivery methods under the New Public Management of the 80s. It should be noted, however, that at least until a decade ago the intergovernmental components of public administrative networks had as yet not been widely studied (O’Toole 2004, p. 471). Self-organising, autonomous interorganisational networks are central to Rhodes’ description of the British state (1996), although he appears to restrict this to the distinction between markets, hierarchies and networks in service delivery, while of course my analysis is focused primarily on policy development. Some of the networks amongst environment regulators appear to be more in line with Rhodes’ analysis, given they are much closer to the ‘front line’.

conveying and changing narratives and discourses about the federal system itself. Networks are an important conduit for institutional stability and for change, both in their formation and in their ongoing operation, and reveal a great deal about how and when officials exercise agency in pursuit of both.

Formal networks are established under the auspices of ministerial councils and their working groups. They are ongoing and instrumental, pursuing work agendas and routinised processes arising from formal decisions and agreements. Their members often meet in the context of the dinners discussed above (section 5.3.2) that take place around ministerial and senior officials' meetings. The seniority of the officials who participate in these networks makes them important channels for officially communicating and signalling jurisdictional positions.

It is really important for intergovernmental relationships that those officers are talking with each other to be able to test what's practical and that they understand the operational context in which different ideas will need to be implemented, because we all work with different legislation. (Interview 28, Territory line department)

The Commonwealth Treasury also chairs a national partnerships network that periodically convenes to discuss forthcoming agreements or problems that have arisen with agreements, and a network focused on horizontal equalisation, which provides the states with an important opportunity to understand the implications of Grants Commission decisions on the equalisation methodology for their budgets.

In contrast with the formal networks, informal networks are often temporary, although over time they may morph into more permanent forums. Rather than arising directly from federal governance structures, informal networks arise in the context of particular policy processes, or in a coalescence of officials with shared policy interests and roles. They have no formal mandate; indeed, many informal networks form after the abolition of formal groups when officials decide they still need to meet with others in the same policy field, such as the Contaminated Environments Network:

when the ministerial group got disbanded and we really had no direction, it was the interest of the representatives on that group that kept it going, because it didn't have to keep going. (Interview 32, State line agency)

As one type of such network, strategic alliances form across formal intergovernmental

structures and boundaries with the aim of bringing about a specific policy outcome.⁹⁷ This type of network illustrates an interesting question Agranoff and McGuire ask (without coming to a conclusion) about whether and how bargaining and networking relate to one another; whether one leads to the other and under what conditions (2004, p. 509). My interviews suggest, as a proposition, that bargaining is more likely to take place in the formal, institutionalised networks, and is less common in the informal networks; indeed, as a misuse of their function, bargaining would be seen as damaging to them.

Networking between the representatives of the smaller states and territories offers them an important way of balancing and resisting dominance by the Commonwealth and the larger states.

You don’t ever want to go out there—especially as a small state—saying, ‘We want this.’ Like yesterday when the Premier announced the power thing, that’s very brave. Normally we don’t do that sort of thing in this patch. We would want to make sure there’s another state that agrees with us. (Interview 34, State line department)

Strategic alliances also form along the ‘fault lines’ between central and line departments, along the lines suggested by Weller and others discussed in Chapter 4. Officials described the formation of horizontal networks specific to each, based on the different perspectives central and line departments have on policy development. For example, I have already noted a strong corporate culture amongst federal and state Treasury officials, characterised by their similar perspectives on and roles in fiscal management, and activated through an open exchange of views that tends to step back from the political fray. This network, complete with a list of phone contacts for officials at both the Commonwealth and states that Victoria coordinates, provides a way for the Commonwealth and state treasuries to work together in guiding their line department colleagues towards agreements whose terms more closely reflect the overarching aims and spirit of the IGA FFR:

Some of the state portfolio agencies are very far removed from the IGA FFR, they don’t know, don’t care about it. They have their particular view about how they want things done. So what we did was, we had a conversation with the relevant state Treasury, and then we had a teleconference with the four parties on the line and we worked through the issues, and we got resolution because the state Treasury was able to say to their portfolio colleagues ‘No, no, this is the way it works’.

⁹⁷ There is nothing particularly new about this finding: Harman, for example, notes in relation to the successful development of national competition policy in 1994-5 that ‘a feature of the competition policy network was that it juxtaposed some newly emergent collaborative strategies alongside more traditional competitive and confrontational relationships.... The alliances and network relationships embedded in the Australian competition policy network were less formal and potentially more fluid than is implied by the European literature on corporatism’ (1996, p. 205).

(Interview 1, Commonwealth central department)

Indeed, such is the closeness of this network, when I mentioned the tendency for the Commonwealth Treasury officials to take this line with their colleagues, state Treasury officials could identify the individual involved.

A second common informal network is the epistemic community. These are networks of ‘professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area’ (Haas 1992). They operate more frequently at lower levels of the public sector and are instigated and managed by mid-level bureaucrats, with an emphasis on the application of their professional knowledge and expertise. Their membership is more flexible than the formal networks, allowing experts from related organisations to be included. For example, the contaminated environment network includes membership from the Cooperative Research Centre for Contamination Assessment and Remediation of the Environment (CRC CARE), linking government officials in the Commonwealth and states with industry representatives and academic experts.⁹⁸

With their authoritative and policy-relevant expertise, these professional networks can have a significant bearing on policy processes. However, their influence may be conditional on a range of factors, including their internal cohesion and professionalism (Cross 2013, p. 147).

Sectoral networking forms a third type of informal network in Australia, particularly in its incorporation of non-government organisations. While the Commonwealth-states policy agenda is managed by central agencies and is highly structured across COAG, ministerial councils and meetings, the horizontal cross-jurisdictional policy field is ad hoc and organisationally fragmented, making it difficult to develop and implement policies that involve central and line departments as well as ‘street-level’ regulators. In response, a number of cross-state peak bodies, such as HEPA have been established, on the initiative of the officials concerned, that coordinate discussion and inform conversations with colleagues in central and line departments. As one environmental regulator put it,

No two jurisdictions are the same in institutional arrangements or jurisdictional coverage. What EPA Victoria does is similar but different to what EPA South Australia or New South Wales does.

⁹⁸ Agranoff and McGuire noted a similar phenomenon in the US, viz ‘the growing conjunctions of federal and state government administrators with nongovernmental organizations in networks that negotiate policy adjustments’ (2004, p. 495).

That makes conversations interesting in that on many items we’ll be talking to the relevant parties, but then on some items there’ll be others within the Victorian state government who might be having a relationship on that issue. In some other jurisdictions the regulator might not even be in some of these conversations. Then in other jurisdictions it is one holistic organisation doing the whole lot. (Interview 14, State line agency)

Finally, informal networks among regulators play an important part in the federal system by preventing regulated entities from ‘jurisdiction shopping’:

if you've got a business that's operating in multiple jurisdictions they'll try to play you off against each other. They'll come in and be like "You should let us do this, because New South Wales lets us do this." And then you ring New South Wales and they say "Oh no we don't let them do that". (Interview 3, State line agency)

These regulatory networks tend, almost by definition, to operate without Commonwealth membership, involving line department and agency officials with long experience at the regulatory shopfront. One official described the ‘us and them’ identification that underpins such networks:

Rotation at the Commonwealth level puts people in who are experienced bureaucrats, whereas the states tend to have people who’ve got a little bit more of a lineage in their particular subject area. Policy seems to be the common thread. If you’re good at policy, you’re good at policy, so you can just go anywhere; whereas a lot of people at the Commonwealth level think that regulation is the act of making regulations, whereas the rest of us see it as the act of executing regulations. (Interview 13, State line agency)

Interestingly, regulatory networks are divided between more senior informal networks and those operating at middle management. Thus, HEPA — itself an informal network — is seen as a policy-making forum from the perspective of the middle level officials engaged in on-the-ground work, leading to the further emergence of operational networks among the latter such as the Contaminated Environments Network and AELERT (although the latter also includes representatives from Commonwealth and state departments of the environment).

Operational people don’t have meaningful ways to engage in cross-jurisdictions at that level. It may very well happen at HEPA, but the heads are so far removed from the actual issues in terms of how to manage a specific hazard that it’s not of interest; it’s sort of in the middle management area where we’re trying to address these things on a day-to-day basis and we have to make decisions and recommendations up to the CEO level, but you get that sort of ability to work with each other. (Interview 39, Commonwealth line agency)

Similar operational networks operate across the intelligence and security community:

I used to encourage the networks where people could talk because the worst way to go into a crisis is when all the known actors don’t know each other because they haven’t been talking. Things work better if there are networks and if the people in Victoria and New South Wales are familiar with their counterparts in Canberra and vice versa. (Retired senior official, Interview 3)

A feature common to both formal and informal networks is their interface with the non-government and business sectors, as a way of building their links to policy stakeholders and communities, enhancing their access to information inputs for policy, and managing the political fall-out from policy announcements and implementation. Thus, for example, the development of the Contaminated Environments Network was actually led by CRC Care, an independent Cooperative Research Centre with participants from academia, the CSIRO and businesses dealing with contaminated sites.

They were really good at bringing together the regulators from all the different jurisdictions for the first time. It was that networking that occurred when we were participating in CRC Care forums that really started it off, and then after that the Contaminated Environment Network came (Interview 32, State line agency)

Other examples that arose in the interviews included the indigenous health and education networks mentioned above and the strong relationships officials working on women's health policies had developed with the non-government sector and women's organisations in particular. These links make an important contribution to the success of the networks, by providing information and feedback, and securing support for the government's programs from stakeholders, clients and other service providers, as illustrated by the network on women's health:

even if we are seen as relevant in government, if we're not seen as relevant from those non-government people and the advocates and activists, if you are challenged at a time of change, your government stakeholders aren't the ones that are going to have your back; it's your NGO women's sector that's going to be the ones asking the questions (Interview 31, State line agency)

However, the inclusion of such bodies is not without risk. It may, for example, generate expectations of policy impacts and change that are unrealistic, or the network's general culture can be affected by changes in the external environment that are transmitted through the external organisations. Thus, a change in the Cooperative Research Centre's role from purely research to one of advocacy has unsettled the Contaminated Environment Network in which it participates:

they're primarily a research organisation, but in the network they've increasingly been trying to move into the policy development space. And that shift has unsettled some members of the group so they would contact me and say "Oh have you received this request for information or participation from the Research Centre? What are you going to do about it? We'll be led by you." (Interview 3, State line agency)

5.5.3 The role of intergovernmental networks in systemic change

Informal networks are often more ambitious in their scope and aims than the formally mandated

networks, ranging widely in their discussions and seeking a broad remit on information gathering and advocacy. However, their lack of political mandate means they have less capacity to carry out a work program. As a participant in the Contaminated Environments Network found,

What you need is the approval process, the endorsement process at a national level which says, ‘This has the right to exist. This is recognised nationally. We can easily buy into that.’ That provides leadership as well and oversight of the process. All the jurisdictions are happy to participate and contribute, but we don’t have the time to lead it. (Interview 32, State line agency)

By comparison, if informal networks are linked to formal structures, they have a firmer resource footing. In the case of high school education roundtables, for example, where there is a long-established federal education infrastructure supported by a federal secretariat and a chairmanship that rotates amongst jurisdictions, a participant from a smaller state noted

we will always ensure that there is room for me and resourcing for me to contribute to opportunities like that. And I will also always ensure that there are staff to engage in that formal follow-up that occurs as a result. (Interview 37, State line department)

Networks formed by officials from central departments have a particular role in forming and pursuing systemic perspectives that may override the particular concerns and ambitions of their line department colleagues.

The key part of the job, really, is having those alliances. First minister’s department people need to be able to recognise the big strategic issues from the jurisdictional perspective because the water people or the health people are always going to be particularly passionate about their thing. That’s the importance of the relationship, especially around a COAG discussion, between the deputy senior officers in the jurisdictions so that you can work out who’s got the shared interests and work out those alliances. (Interview 38, State central department)

In that role, central agency networks, particularly those involving treasury or finance officials, can be called on to dampen the pressures for change and the expenditures that come with it, but this may be oversimplifying a more complex guardianship role. First, central agency networks are often leveraged to help reach agreement to produce a policy outcome where, for example, the relevant state portfolio officials are unused to the agreements framework. Second, central agency networks may try to generate more general cultural change amongst both the Commonwealth and state portfolio departments, with the aim of keeping the Commonwealth from becoming involved in input controls, in concert with state line departments keen to get their hands on the money. Most state officials felt the Commonwealth central agencies still supported the IGA FFR’s normative effect on fiscal federalism:

Treasury officials still seem to have quite an idealistic view about the IGA and saw it as still setting the normative framework for relationships between Commonwealth and the states. I know they're giving me the line, but I also feel that it was a genuinely held belief on their part that there was value in the IGA and its aspirations (Interview 17, State central department)

The different varieties of networks all display trajectories of evolution and change. While many informal networks lack a formal agenda or program, I noted that, as they became established with a stable membership, they tend to take on the characteristics of more formal networks, through the adoption of work programs and routines, and through their recognition and legitimization by senior officials and forums.

HEPA is a good example of the characteristics I have described.⁹⁹ HEPA began as a response by individual EPA heads to the revocation of the Standing Council on the Environment and Water in December 2013. Its first meetings were largely about building relationships between them and exploring the issues and problems they had in common, but it had an ambitious aim:

If we can get the federal department to play with us in the same way, we actually have a chance of giving our ministers, no matter what their flavour, no matter whether their Commonwealth or state, a very real action to actually change things. (Interview 12, State line agency)

As a work program emerged that suggested HEPA might have value as a policy-design and delivery forum, it adopted more formal governance arrangements and ministerial recognition:

while it does not have a mandate, the more we say things in the voice of HEPA and give work and make HEPA real, it becomes a value-adding organisation. It's to the point now where at the next Meeting of Environmental Ministers meeting there will be report back which says that HEPA has agreed to do this and HEPA has agreed to do that. (Interview 14, State line agency)

A similar dynamic is at work in the area of indigenous health, where the state and territory working groups on sexual health in indigenous communities have recommended to the federal minister for indigenous affairs that a more senior and formal governance network be established, in order to have a greater policy-making capacity:

having representation on that group who are decision-makers and who can make decisions in the room rather than having a group that can have a conversation but don't actually have any ability to make decisions or commit funds. (Interview 40, Commonwealth line department)¹⁰⁰

As an outcome of their emergence without formal mandate or terms of reference, informal

⁹⁹ I had the opportunity to examine HEPA's history and operations from a number of jurisdictional participants' perspectives, 'snowballing' a subset of interviewees from environmental regulators across all three state jurisdictions, with an additional perspective on environmental regulation from the Commonwealth.

¹⁰⁰ As networks become formalised or mandated in this way, they illustrate a form of 'layering' as one of the types of incremental change Mahoney and Thelen describe (2010).

networks tend to work across structural and organisational boundaries, ranging widely as members explore what resources the network has to offer. For example, the volunteer middle manager heading one network described how

everybody comes to me as the chair, and says "Oh I have this problem", or "I have that problem", but sometimes the problem might not even be related to things the network has discussed.
(Interview 3, State line agency)

As a result, informal networks help to break down the siloes that impede collaborative policy work. For example, indigenous health networks bring together the state office, Department of the Prime Minister and Cabinet, state governments, the peak bodies of community-controlled health organisations, representatives from the primary health network boards (PHNs),¹⁰¹ and local hospitals

to share information, to troubleshoot anything, to talk through a new policy, to seek feedback. We want the PHNs to develop those really strong relationships with the community health sector, because if they can commission out, then we'll actually pick up people who are falling through the gaps. (Interview 40, Commonwealth line department)

5.5.4 Intergovernmental network management

Institutionalism's turn to the study of networks as stable and recurrent patterns of interaction and exchange between individuals and organisations provides a framework for formulating some general propositions about the role of network-building and management in the craft of intergovernmental management generally.

The two types of relationships on which all intergovernmental networks are based are those of trust, on the one hand, and information exchange on the other. These are closely interacting: without trust, the level of information exchange is sub-optimal and the process laborious, whereas good information exchange is a *sine qua non* for the development of trust.

Not surprisingly, more than half (23) of the interviewees identified trust as an important attribute of their intergovernmental relationships. Fostering such relationships and putting them into practice is an ongoing part of their role that they consciously distinguish from their involvement in negotiations and agreement-making:

When you're exploring new ideas and thinking innovatively about things, you've got to be prepared to be wrong, and you've got to be prepared to have those conversations in a way that is not a negotiation but everyone on the same side of the table is collaborating and exploring an issue. People are not that often prepared to let go of that negotiating-type role. That's about trust.

¹⁰¹ Primary health networks are independent organisations working with local hospital networks, overseen by a board of medical professionals and advised by a clinical council and a community advisory committee.

You still have an agenda. We absolutely had an agenda but we went into that project very prepared to say, 'Come what may, let's see where the evidence takes us as we do that piece of work.'
(Interview 22, Territory central department)

Informal meetings are an important way of building the trust that makes more formal meetings and negotiations work, particularly by allowing jurisdictional positions to be clarified and agreements reached before the formal meetings take place. One senior official described leveraging his history of working at both the Commonwealth and state levels in order to build that trust:

So you're partly trading off those relationships where you say, 'Look, I'm not trying to do you over,' and you're being very frank and forthright, but it's more effective in the end. (Interview 10, State central department)

Indeed, many officials considered that relationship-building was a distinct aim of their meetings:

The first half of the day - it's one day twice a year - we meet the night before for dinner, to get to know each other a bit better, because we don't know each other that well. (Interview 12, State line agency)

Similarly, officials discounted formal meetings as a venue for information gathering and dissemination, highlighting the importance of the informal meetings for that purpose (the reverse of the tendency for bargaining to be done at the formal meetings):

Very rarely would an intergovernmental process be the relevant mechanism through which you have an opportunity to look at, say, for example what might be happening in another state and say, 'Well, let's have a look there. Maybe we can learn from what they're doing'? (Interview 23, State line agency)

Trust does not emerge without a conscious effort by officials to build relationships on the basis of what they can bring to the policy process and confidence that they can speak frankly.¹⁰² Officials will regularly bypass official channels and venues to contribute to a general policy outcome, especially where this would be difficult in a ministerial or senior officials' meeting:

What you might do if you don't feel able publicly to say, 'Look, this is going on,' is to have a bilateral conversation with a couple of jurisdictions. I have regular phone conversations with the Commonwealth on the side. For example, I had a side conversation with the Commonwealth to say, 'Look, we haven't got anywhere on the national affordable housing agreement. I said, 'You need to talk to that immediately, otherwise that will be the elephant in the room and we won't be able to go anywhere.' And they took that advice and they worked it through. (Interview 31, State

¹⁰² I consider this an important rejoinder to the assumptions of rational choice theory or, for that matter, Kingdon's multiple streams framework which only discusses the role of the bureaucracy in making policy suggestions or setting agendas in terms of protecting or expanding their 'turf' (2003, p. 114)

line agency)

Such relationships reduce the transactional drag on negotiations caused by mutually adversarial perspectives, particularly around resourcing, described in the previous chapter. As one official suggested, informal networks provide a basis for more effective agreement-making in the formal structures:

If you don't have trust in the conversation, people might say, 'The thresholds that the Commonwealth is proposing are more reflective of the liability that it's facing rather than human health and the environmental risk that's in front of you. If you don't have the facility such as HEPA to have those conversations where you can build trust and relationships, you can see how an operational issue on the ground can become an issue which builds distrust. It means that nothing moves forward. (Interview 14, State line agency)

This transfer of affect from the formal to the informal aspects of intergovernmental management highlights a key principle of what Ansell calls 'network institutionalism,' the assumption that network linkages are overlapping and cross-cutting (2006, p. 76).

Although I have distinguished between formal and informal networks for analytic purposes, in reality they are interlaced and interactive. Formal networks can take on aspects of informal networks through the agency of individual officials, such as the decision to work differently and outside the normal operational rules.

On the other hand, informal networks can become institutionalised through adopting aspects of formality: agendas, routines, work programs and the like. HEPA's work on contamination from firefighting foams, for example, has become an agenda item for the environment ministers' meetings:

HEPA, while it does not have a mandate, the more we say things in the voice of HEPA and give work and make HEPA real, it becomes a value-adding organisation. It's to the point now where at the next MEM meeting there will be report back which say that HEPA has agreed to do this and HEPA has agreed to do that. (Interview 14, State line agency)

As a result, informal networks may gain a degree of recognition as part of the formal intergovernmental framework and a legitimate way to get things done and to reach agreement. Thus, for example, epistemic communities may be created by governments or through governance processes for the purpose of providing such advice which may give them greater access to decision processes than might be the case for more independent networks (Cross 2013, p. 153).

Officials are often asked by their first ministers to follow up particular issues with their

colleagues in other states or territories, which may begin an informal network around a particular policy issue. More broadly, the informal networks often derive their legitimacy from formal structures such as ministerial or senior official meetings which bring officials together.

we're having a lunch just with principals afterwards, and we're just going to chew the fat about what is Brexit and Trump and income inequality mean. What does it mean in our context? We wouldn't do that if there wasn't a formal meeting. The formal meeting, in a sense, authorises us all to hop on a plane (Interview 10, State central department)

It is not always the case, however, that a mandate for a network is required or sought. As I have shown, networks may operate without a formal mandate, generally on the basis that these networks are continuing arrangements rather than starting out; there is already a high degree of interpersonal trust; and there is a strong sense of personal mission amongst its members. In the case of a middle management environmental regulators network, for example, an official recalled that a formal mandate had been essential to begin with. However, subsequently, following abolition of the Standing Council of Environment Ministers,

I had a meeting, and the agenda item for the meeting is 'do we want to keep this going? Cabinet authority is gone, what are people's views?' And it was unanimous, 'Yes we want to keep it going.' One of the more respected jurisdictions said 'let's just get going until someone tells us to stop.' It's moved beyond the structure, because for a period of two, at least two years, maybe three years, we didn't have that authority anymore (Interview 3, State line agency)

A good example of this flexibility is the discretion and autonomy given to technical experts. For example, experts in the environmental contaminants field are authorised to work with one another across federal boundaries with a significant degree of autonomy:

They could interact with the Commonwealth or with any other state. They might be working on these firefighting foams and they will interact with the Commonwealth. The Commonwealth set up a committee to establish new guidelines on these firefighting foams. Our people just joined it naturally. They were invited in their own right because they are experts and then they let us know, they certainly don't need to seek my permission to do that. (Interview 12, State line agency)

A further characteristic of network institutionalism is that networks are both resources and constraints on behaviour. As resources, they are conduits for information and assistance, and allow officials to get things done without getting caught up in formal jurisdictional positions. As constraints, they are 'structures of social influence and control that limit action' (Ansell 2006, p. 76).

Negotiating the tension and balance between networks as resources and constraints is a salient aspect of the craft of intergovernmental management. Structural factors are an important context for determining this balance, in that officials in statutory authorities have more

independence to form and operationalise their networks than their colleagues in line departments, and particularly in central departments.¹⁰³

Statutory authorities and regulators tend to have a slightly better degree of independence and see themselves less as a branch of government - still public service, but we recognise our independence, whereas departmental regulators I do think are often hindered somewhat through the fact that they are also the policy maker and are very much more linked to ministerial policy. (Interview 13, State line agency)

A line department official confirmed the tendency for policy department networks to be more constrained in their information-sharing:

Random chats about things don't happen that often in my role, mainly because my role is legislative. I don't have a licence to just go off reservation in terms of a policy. A policy suggestion coming from me would be a bit left field. When we've had larger recommendations for reform, those have come out of reviews that governments have themselves initiated. So there's not that much left field-type thinking in this space. (Interview 27, Commonwealth line department)

Similarly, where networks have become institutionalised they can impede the development of newer networks, especially where there are hierarchical differences in the seniority of their personnel. For example, an official noted how difficult it was to push work through non-official channels due to the proliferation of networks in the occupational health and safety field.

There's senior officials, there's [Heads of Workplace Safety Authorities] (HWSA), there's HWSA working groups; it's a lot more hierarchical in terms of governance groups. If I was to write to all the regulators in work health and safety and say, 'Well, I've done this great research and I've identified these issues. Do you want to work with me?' they'd write back and say, 'This should go through HWSA.' That would be their first response. They would defer it to a formal governance arrangement. I'd have to negotiate my way into membership of a group that exists for a broader purpose. (Interview 39, Commonwealth line agency)

The final meta-principle Ansell proposes is that networks provide varied access to resources, information, and support (2006, p. 76). Networks can provide quick access to know-how or resources, such as Tasmanian experts helping Victoria's EPA to manage a major fire in a coal mine, or the environmental regulators' ability to identify regulated companies trying to 'shop' amongst the states for the most favourable rulings.

Some researchers have argued that governments with fewer resources may not be able to join such networks, even though they would potentially benefit more from doing so than those with greater resources (McGuire et al. 2013, p. 8). The interviews suggested that, at least as far as

¹⁰³ Although I don't want to overstate this; I have already mentioned a distinction between the Treasury networks and the role of officials in the Prime Ministers' and Premiers' departments.

the federal system is concerned, networks can provide an important way for smaller jurisdictions to compensate for their size, and to balance the power asymmetry in negotiating capabilities:

Our strategic policy work needs the official channels but they need to have the networks through the unofficial ways too. Where are we, who's like us, who can we learn from, what are we doing well and how do we know? For a small jurisdiction we've got to look out regularly. (Interview 28, Territory line department)

Similarly, networking provides ways for departments and agencies in smaller jurisdictions to leverage the research, policy development and communications work done in larger states. For example, an EPA official from a smaller state was able to use the communications put out by a larger state's EPA:

the investment we put into some of these institutions pays off big time. I've got one of the major states' EPA's full communication statement. We'll do it on the sniff of an oily rag, but they've got teams of people working on this stuff. It's going to be better quality. It's going to be more organised and more rational. And I've just got that without even asking for it. (Interview 33, State line agency)

Notwithstanding Ansell's argument that networks cannot simply be reduced to the attributes of their constituent individuals and organisations (2006, p. 76), I would argue that it is equally not possible to understand the processes of network formation and management without saying something about the personal characteristics of the officials engaged in this work.

In the next chapter, I will look closely at how and why they are motivated to do so, and what ideas they tap into to develop their arguments and strategies. For now, I would simply note that the effectiveness of intergovernmental networks depends heavily on the attributes of the individual officials operating in and across them.

The risk of eliding the role of individuals in network formation is that it overlooks the personal agency involved in doing so, and overcoming the organisational inertia and the time and money involved that often prevent them from forming.

An important issue that confronts officials engaged in building or maintaining networks is the cost of doing so, in terms of time, financial resources, and organisational capital relative to the information and support received. (This is even before we get to the 'acrimony, power determination, disagreement over problems and aims, impossibility in reaching agreement, and lack of implementation ability' McGuire and Agranoff describe [2011, p. 266]). One official estimated that setting up a network, at least in its initial phase, required one to two days' work

a week. But network management continues beyond this stage, turning from establishment to maintenance, which may involve organising work, resolving disputes among members, and building relationships with other organisations. There are also the costs of overlapping networks: just as duplication between jurisdictional roles is a cost to the federation, overlapping networks are a cost and disincentive to collaboration:

there are certainly executives that I have dealt with who have said "Well yeah that's great that you have your network but I've got my own network, so I'm not going to use your network." (Interview 3, State line agency)

McGuire, Lee and Fyall argue that intergovernmental managers require clear ‘guideposts’ for assessing the extent to which participation in intergovernmental solutions will outweigh the costs incurred by collaboration (2013, p. 12) and this applies to the formation of networks as well. Not all managers, for example, are necessarily supportive of such investment if, as described by one official trying to develop a network, managers see this as a lower priority:

the push-back from my manager was not because he didn't see value in the group, but because he didn't see value in the group *now*. I had other things to work on, and this was distracting me and my colleagues from these other things that I could be working on. So we're caught in this reactive cycle where we really struggle to get our heads above water to think about things more proactively (Interview 3, State line agency)

Many officials described the personal leadership they had demonstrated in setting up a network as an example of the way officials foster change in the intergovernmental system.

Basically I just used peer pressure to get people to participate. One jurisdiction took about three months to even work out who they would send. Another jurisdiction, I had to find my other contacts to give them a bit of a kick to come for that first time (Interview 39, Commonwealth line agency)

The role of the network organiser, or chair, is a particular example of the personal agency officials enact. Such organisers can play a significant role in steering the group, rather than passively accepting its directions from senior officials, ministers or COAG.

I've been chair for the last three years, and I've looked at non-traditional areas where we haven't collaborated well. One was around communicating with the public and engaging the public in what we call risk communication. It's an area that we all talk about but we're not good at. So why don't we look at how we can learn together around what's gone well, what's not gone well and figure out where we might need to build capabilities in our organisations (Interview 33, State line agency)

It is also important to recognise that the individual attributes of its members can affect and change the directions a network or an organisation might otherwise take. For example, there is obviously a tendency for larger states to dominate the discussion in formal and informal

meetings. However, the experience and longevity in the role that a smaller jurisdiction's representatives may have can earn them a place at the table they would otherwise struggle to maintain:

when smaller jurisdictions speak, people tend to cut them off more, or dismiss them. There are people that sit around the table with me, and their eyes tend to roll over at the same jurisdictions. [But] there seems to be more respect for [official] who is another person in Western Australia who has quite a lot of experience. There does seem to be a differentiation between people who've been in the game, if you'll call it, longer than others (Interview 3, State line agency)

A retired official recalled a period when the Australian Health Ministers' Advisory Council, which supports the COAG Health Council, was chaired by the secretary of a Tasmania's health department.

People would say, 'How the hell could Tasmania provide leadership on anything?' But he was very well respected by all the other heads of department. So the fact that he ran the Tasmanian department of health, which was two hospitals and a dog, didn't matter. Everyone else highly respected him. He was very energetic, very far seeing and developed and ran a very good agenda of looking at reform and implementing that reform. (Retired senior official, Interview 1)

Similarly, officials noted that the shared attributes of individuals working in particular sectoral networks, by way of shared training, background and experience, can generate an atmosphere of trust conducive to collaboration:

Health doesn't talk to transport; transport talks to transport, obviously. Often the people you're dealing with have a common academic background. If you go to a department like transport, you'll find a coterie of engineers. So you're dealing with these officials and they've come through the same schools of economics or whatever. They've been forged in the same fires, so you're talking to people who basically have very similar views generally as yourself about what's good policy and what's bad (Interview 35, State central department)

There is a risk, however, that although a common background helps to generate trust, it can also generate complacency and group-think.¹⁰⁴ Although Australia's jurisdictions are not widely diversified along social or economic lines, there are nevertheless enough differences to make officials conscious of the need to understand where other parties in a negotiation may be coming from:

why negotiations often take so long and are hard is because to negotiate well, you need to be able to put yourself in the other person's shoes and understand what really matters to them. If someone's grown up their whole time in New South Wales, a reasonably large and prosperous state, do you really understand where the Tasmanians are coming from? Or if you've only worked in the Commonwealth, do you really understand the pressure that the state official with the *Daily*

¹⁰⁴ In their study of Flemish public administration, Oomsels et al. identify groupthink as 'a potentially dysfunctional consequence of interorganizational trust' (2016, p. 14)

Telegraph hammering on about something? (Interview 10, State central department)

5.6 ‘We wear two hats’: intergovernmental management as an institution

This final section brings together the empirical findings so far, in examining how officials understand the implications of the complex formal and informal processes and structures in the federal system, and their interrelationships, for their intergovernmental practice.

Practitioners themselves recognise intergovernmental management as a distinct form of public administration. They frequently use metaphors to describe the work, such as ‘stagecraft’, ‘a dance’, an ‘ecosystem’ or a ‘game’. Such metaphors reveal a great deal about the way they think about their strategies and options and how they think of themselves as a distinct group within the bureaucracy, with a particular *esprit de corps* based on trust and commitment to the system as a whole, developed over long periods and reflected in a group culture:

because you get people sitting around the COAG table for years, the relationships are actually pretty good. There’s a language, there’s a way of operating that’s kind of implicit that’s accepted and expected that can smooth the business end of things a bit. (Interview 22, Territory central department)¹⁰⁵

An initial foray into understanding the implications of this distinctiveness can be made using Parry’s approach to the British civil service culture in the context of devolution. He is particularly concerned with ‘a ‘very elusive issue — the sense of identity felt by a public functionary, as defined not just by the vertical relation with a political mandate, but the horizontal relation with others doing the same task’ (2012, p. 289).

Parry distinguishes between two styles of working in intergovernmental management.¹⁰⁶ The first, in which he argues the role of officials is crucial, is the *interdepartmental* style, a policy process organised around briefings in which officials inform and warn one other about problems and support meetings of political leaders with constant discussion. Importantly, he links this style of working to what Australian public servants would recognise as the classic ‘Westminster’ model of public administration.

Parry distinguishes this style from the *diplomatic* style, defined by the interaction of sovereign

¹⁰⁵ Note the discursive implications of the ‘language’ metaphor used here. More generally, see Clarke (2007) for the importance of such metaphors in capturing the nature of jurisdictional interdependencies, how they emerge and change over time, and their role in mobilising supporters for change. Shpaizman (2014, p. 1043) provides an example of the systematic study of metaphors in a case study of immigration policy.

¹⁰⁶ In Parry’s case, this is in the context of the UK’s devolved governance, but as I indicate below I think this is also meaningful in the Australian context.

powers whose relations are defined by procedures and protocols. These interactions are often highly formal, with choreographed meetings and outcomes in which questions of national interest and of gaining or losing position hang over the process. Officials may not have a history of personal dealings and are defined by the offices they hold (2004, p. 51; 2012, p. 289).

Parry's work reflects the distinction Wright, Agranoff and others have drawn between intergovernmental management and intergovernmental relations that I explored in Chapter 2.1. More broadly, however, this distinction follows the distinction officials themselves draw between the formal style and functions of executive federalism, as enacted through COAG and its councils, and the informal relationships I have been describing in this chapter, with their emphasis on longstanding relationships based on trust.

Interview data highlighted — to a surprising extent — the consistency and clarity with which officials reported their perceptions of intergovernmental *management* as separate and distinct from the political aspects and dynamics of intergovernmental *relations*. Across jurisdictions, organisations, and policies, officials actively construct and maintain this distinction for a range of purposes and motivations, guided by the norms and values they derive from the federal system overall, and the cultures of their jurisdictions and organisations (as will be illustrated further by the data reported in Chapter 6).¹⁰⁷

For example, here is a Commonwealth official describing his role in a central agency:

We wear two hats. If we are considering a Commonwealth cabinet submission, then we are very much Commonwealth public servants working to the Prime Minister, and our Secretary; but at other times when we are organising and arranging the [COAG] meeting and trying to ensure that the COAG meeting is productive, we need to be considering not only what the Commonwealth wants out of the meeting, but also what other COAG members want out of the meeting (Interview 2, Commonwealth central agency)¹⁰⁸

This coordinative discourse presents the federal bureaucracy as distinctive in two ways. The first is normative, emphasising the elevation of the bureaucratic process out of the political mire, and placing this work in the context of a broader 'Westminster' set of public service values. Officials describe the practice of intergovernmental management as a de-politicised embodiment of their respect for executive government more generally.

¹⁰⁷ Apart from originally emerging as a concept in the US, this separation has also been noted in Canada (eg Johns et al. 2007).

¹⁰⁸ Simeon (1972, p. 136) similarly noted that officials in Canada had a 'dual loyalty' to the committee and to their own government.

In doing so, they are, of course, reflecting the broader Westminster culture of competing and overlapping ‘serial loyalist’ public service bargains between public servants and ministers, in which carefully apolitical bureaucrats, as agents, serve their principals, whoever happens to form the government of the day (Hood 2000; Hood & Lodge 2006). Importantly, however, this normative view of intergovernmental management contains elements of what these authors call an alternative ‘technocratic trustee type bargain’, the implications of which I will describe and explore below.

A second, if related, view of the bureaucratic dimension of federalism is process-focused, instrumental and ad hoc, rather than normative, seeing separation from politics as a way to ensure that the work of the federation is able to proceed even when there is conflict at the political level.

People just see COAG and that kind of public face. And the reality is, for the other 11 and a half months of the year, we are just generally getting on with things behind the scenes in terms of trying to share best practice, talk about the pressures that we all face and how we can try and bring together some of our shared expertise. (Interview 19, State central department)

In that role, the federal bureaucracy provides systemic stability and institutional memory. Echoing the academic view of the importance of networks, for example, one official saw them as a defining differentiation from the political space COAG occupies:

The benefit of the public servants in this process is a little bit stepped back from the political fray; they can try and bring the genuine state interests or the national interest to bear and try and work out a solution. (Interview 10 State central department).

Bureaucratic processes and relationships are seen as a vital element in the efficiency of the federal system’s day to day functions, including the preparation of agendas, policy briefings and ensuring that ministerial meetings are well informed. The capacity for such systemic functioning even at times of political crisis depends on the relationships between officials built up over time, allowing for consultation and collaboration, ‘without prejudice’ in a political sense:

This is one thing officials can do really well... You can have a private conversation or an informal conversation where you talk about what really are the issues around this matter, what would a good solution look like, what are we trying to achieve and then what are the policy or the financial or the other impediments and where would you find a way of dealing with them. You can have that sort of conversation without committing your government or without letting your government down in a negotiation (Interview 30, Federal Line Department).

Officials in central agencies saw this separation as a particularly significant aspect of their work

in the grey area, as one official put it,

between good public administration and the art of the possible. Because of the politics that surround any particular matter and because of the positions we occupy, there is a really strong awareness of politics and a sensitivity to the politics around any issue, but it's not an echo chamber of the politics. We will be looking as far as possible for compromise. It's an interesting dynamic of not just bringing the politics of an issue to the table and then sitting on that and ruling lines; it's a much more constructive engagement. (Interview 18, State central department)

As shown by the data analysed previously in this chapter, the successful practice of intergovernmental management involves not only a preparedness to prosecute one's own political executive's policies, or one's own jurisdictional and even organisational interests; at the same time, intergovernmental managers articulate and practise a commitment to the effective and efficient operations of the federal system overall. The interviews presented a great deal of evidence for this support of the federal system as a goal in itself, with the following being a typical perspective:

I have never been around a table where there has been overt politicisation in the room. Politics always, of course, influences positions, but people respect the institution of COAG. (Interview 18, State central department).

Similarly, officials frequently described an ideal policy outcome from the point of view of the problem, rather than the political solution. In the case of environmental policy, for example, one official described the sense of environmental guardianship around the table:

what we're really trying to do is beyond the political cycle. We're trying to advance environment protection and community protection. We'll do that with the best knowledge and skill our organisations can deliver to us at the table. But sometimes, as you well know, the politics mean we can't go there. But before we get to that, let us have at the table a really open process where we talk about the issues and then we might have to have a secondary process where we talk about what it is possible to do. (Interview 12, State line agency)

Even in the case of fiscal federalism, the most highly politicised aspect of the federal system, officials articulated the difference between their jurisdictional interests and a systemic outcome:

I think Commonwealth-state works best when the highest proportion possible are genuinely starting from 'What's in the national interest' rather than just trying to play, 'I just want my little bit of the action.' It's the difference between distributive negotiation and integrative negotiation. Distributive negotiation is your classic zero sum gain arguing about the size of the pie. Integrative negotiation is, 'How can I increase the size of the pie?' (Interview 10, State central department)

As a general principle of their approach, officials generally held that protecting one's minister's, or jurisdiction's, or even organisation's 'interests' or 'turf' requires at least some

sensitivity to those represented by officials across the table.

This might mean, for example, that officials keep an issue alive, if only on the backburner, until a change of government or some other opportunity presents itself to restart the process. Despite being ordered to cease the work that had been done in the new Commonwealth-state working groups under Rudd when his efforts failed to secure the new Prime Minister’s approval, this official maintained a low-level work program based on those collaborations:

I didn’t feel like pulling the plug, quite frankly, so I tried to keep it alive to a certain extent. I knew it wasn’t going to go anywhere immediately but I said, ‘Let’s not throw everything out. Let’s just pause and wait and see what happens.’ We didn’t have a deal, but we had an understanding that we were in this together and we would actually try and do something positive. And that was my objective. That’s the best I could do in the process. I could have gone like some Commonwealth bureaucrat and said, ‘All bets off, see you later,’ and walked out the room. (Retired senior official, Interview 4)

The separation of the bureaucratic and political dimensions of the federal system becomes even clearer when they are perceived to collide, to be operating in different and not necessarily compatible directions. Officials expressed discomfort with political horse-trading and conflict, especially when it was carried out in front of them.

It was awkward, actually, that it played out in front of officials, too. It would have been preferable had they had the opportunity to have a quick meeting in the cabinet room or something like that and have a discussion about it rather than have this horse trading in front of officials who were trying to draft bits of the communique and wrap up each session of that COAG meeting. (Interview 21, Commonwealth line department)

A large part of the craft of intergovernmental management is about managing (and navigating) the tension between these political and bureaucratic domains. Officials described the need to marry a sensitivity to and awareness of the political directions of their governments to the practical exigencies of managing their departments and agencies, such as work priorities, resourcing, and — more interestingly — how such political imperatives informed, but were not necessarily identical with, the strategic directions they had set for their organisations. For example, the official quoted above on fiscal federalism goes on to describe the implications of this view for his negotiating strategy:

if we do a cunning funding deal with the Commonwealth but at the end of the day the Commonwealth ends up with a budget problem because the health expenditure still blows out and they can’t afford it, I’m not going to have a cunning funding deal for long because the pressure is going to flow back. So we have to get a national interest outcome because if we don’t get a national interest outcome the brilliant deal we’ve got on paper will not be sustainable. (Interview 10, State central department)

Not surprisingly, government and ministerial policy directions were frequently cited as a constraint on policy development and negotiation. Within the Westminster convention of serving the minister, however, officials were prepared to exercise their agency in constructing or using that bureaucratic space to pursue public value outcomes they perceived as distinct from those of their political executives. In effect, they appear to be drawing on an alternative coordinative discourse that reflects at least some of the key elements in what Hood and Lodge call ‘trustee’ type bargains between public servants and ministers in which public servants are expected to act as independent judges of the public good and not merely to take their orders from the executive. They conclude ‘the notion of a trustee relationship implies that public servants possess a domain of autonomy in which they exercise discretion in a way that is not subject to commands or control from elected politicians’ (2006, p. 26).

In intergovernmental management practice this might occur, for example, through the negotiating process described in Chapter 4, where senior jurisdictional representatives had some latitude in finding solutions to achieve a deal, including exceeding pre-arranged negotiating strategies and briefs in the pursuit of an outcome that.

Officials were disarmingly forthright about the highly discretionary approaches they took to drafting intergovernmental agreements, policy papers, and even legislation or regulations on the basis of their expertise and policy knowledge. One official, for example, described inserting provisions into a draft bill that he knew would not be noticed by his superiors, ‘to protect the Commonwealth’s interests’ and because he was afraid they would be negotiated away if they came to light (Interview 42, CW Line Department).

The most frequent exercise of personal agency in this separate space is through establishing or maintaining ongoing, safe, de-politicised networks. If there is one element in the practice of intergovernmental management that is almost universally viewed as critical to capacity and effectiveness in that role, it is this process of communicating outside the political context, even though, in the end, political dynamics will determine the outcome of a policy process.

Your jurisdiction might be advancing a proposition that is largely illogical, not evidence driven but is fundamentally something about the politics of it. So you then can’t ignore that in your contribution to the debate. But, equally, you are looking for a pathway to the resolution of the issue rather than simply amplifying the politics around whatever the issue is (Interview 18, State central department).

Interestingly, the openness of such dialogue is often accepted by the political executive as

contributing important information on other jurisdictions’ standpoints. When the Heads of Treasury Departments held meetings, for example,

we didn’t report the outcomes to the Treasurer. I can’t recall ever a minute or a brief going up to the Treasurer. I can remember having a few chats about some of the discussions with his chief of staff, but there was no formal brief. Treasurers of the day said, ‘Okay, that’s great. You guys are getting together and having a chat. That’s fine.’ (Retired senior official, Interview 4).

5.7 Swimming beyond the flags: agency and intergovernmental management

Turning to the implications of these findings for the bureaucracy’s role in federal dynamics, on one proposition suggested by the data is that this separate institutional space for intergovernmental management reduces the effects of path dependency in the federal system, thereby opening possibilities for bounded agency. At this bureaucratic level, there are lower costs to departing from previously held positions, by comparison with the political domain where such costs, in terms of public and media opprobrium can be very high.

This dissertation’s concern with the relationship between structures and practice is encapsulated in one senior state official’s description of the relationship between them as ‘swimming between the flags’. The metaphor was adopted in subsequent interviews as a device for interviewees to describe how they provided administrative discretion to their subordinates or responded to such constraints (sometimes described as a matter of how widely-apart the flags had been placed) and — on important occasions — to describe how they had swum ‘beyond the flags’.

Accordingly, I use the term ‘bounded agency’ to refer to the institutional reality that officials are still, as the metaphor implies, swimming between flags set by their political and organisational executives. Swimming between the flags must still follow a logic of appropriateness that is derived from those constraints, and from the norms underpinning the formal and informal structures and processes discussed so far.

There was quite a wide gap between the flags, but you’re only ever swimming 25 metres because you were only getting to the next point well enough so that you could go to government for the next set of decisions. It was a very iterative process. (Interview 26, Commonwealth line department)

The more significant the reforms, the closer the flags became because, as one official extended the metaphor, ‘the sharks are out there’ (Interview 34, State line department):

with the highest profile and most difficult pieces of work, it's much clearer. You have negotiating strategies which go to cabinet and you operate within those. 16

Another factor in determining the limits of agency is the form of the agreements process and its guidelines. For example, in describing the impact of the Rudd Government's changes to fiscal federalism on Commonwealth-state negotiations, and particularly in moving the Commonwealth to a focus on outcomes rather than inputs and outputs, an official recalled that they were given considerable autonomy, subject only to the agreements architecture, 'and if people tried to break down the architecture, that was the point where we'd draw the line' (Retired senior official, Interview 4).

Within that logic of appropriateness, or the boundaries of legitimation, I turn from historical to discursive institutionalist methodology to understand how a range of alternative strategies and options becomes available for consideration.

This was an area of particular focus for the interviews, even though few interviewees initially understood what I meant by the term 'the rules of intergovernmental management' that I adopted in my pre-interview communications with them. (I had forgotten the multiple ways in which the simple term 'rules' can be understood, such as regulations, instructions, precepts, principles and strategies [Ostrom 2005, p. 17]).

Four rules were prominent in their consistency throughout the interviews as a guide for practitioners.

1. Information exchange must be conducted in an apolitical manner.

This rule effectively sets up the separate space in which intergovernmental management is conducted and the trust it requires. The rule may even require information to be kept from one's minister; as one official recalled:

We'd have to say, 'This conversation, this bit only goes between us on an issue. You can't take this to your minister because it will be used politically.' (Interview 30, Commonwealth line department)

Officials were very clear that allowing such conversations to be used for political purposes was not just a breach of trust in any particular case, but damaging to the system of intergovernmental management as a whole. Consequently, such 'defections' were rare:

there would be very few, if any, occasions where the confidence and the trust has been broken in that environment. If it does, it's usually through inadvertence, like someone's gone back and spoken to their premier's office and they've gone, 'Here's something that we can take advantage

of.’ (Interview 18, State central department)

One of the reasons why defections are rare is because of the shared vulnerability in adopting this open stance in negotiations, as a Commonwealth official described:

I would have offered a sense of where the Commonwealth was heading and why. Had they ever abused that trust that could have been awkward for me, but it was never abused, ever. (Interview 41, Commonwealth line department)

Interviewees were asked to provide examples of where or how they had made a personal impact; where they could see the ‘footprints in the sand behind them’, as it were. Many of them referred to a skill in developing the means, and harnessing the opportunities, to share information within and between jurisdictions while bracketing political and organisational interests. One official described getting phone calls from her colleagues in other states

saying, ‘We’re proposing to do something. Have you done this? What have you done?’ And there’s a view that you can share that with confidence, which is very important because it’s basically allowing policy formulation and policy development to develop in confidence. There isn’t an adversarial view generally. (Interview 35, State central department).

2. Agency shapes personal, organisational and jurisdictional strategies but does so subject to structural accountabilities.

These accountabilities begin with the formal constitutional and fiscal frameworks. These ‘set the flags’, as it were, particularly for state officials who are very conscious of the Commonwealth’s fiscal dominance:

we have one or two choices - accept Commonwealth funding on the terms which the Commonwealth is willing to provide it when they decide to tell us they’re willing to provide it; provide it ourselves or start terminating services when cash flow means that we’re no longer able to provide funding certainty. So these are very compelling challenges for the ministers that are actually dealing with those stakeholders. And it becomes very difficult to have a kind of walk-away strategy on agreements. (Interview 17, State central department)

Government policies and the responsibility to deliver them are, of course, a major constraint. In a federal system, this has additional dimensions. First, officials described the difficulties of reaching national agreements where one’s own government’s priorities differed from those of governments at other levels in the federation or horizontally:

If some other jurisdiction came and said, ‘Let’s have a national approach to how we deal with nurse-patient ratios,’ we might go, ‘Mmm, actually, we’re doing our own things. We’ve made political commitments and we’re comfortable with doing that. We don’t see the value of delaying our process and putting aside our political commitments to join a longer time frame that could draw out to who knows where if it goes to a national process.’ (Interview 15, State line department)

The centrality of COAG to the general operations of executive federalism and the ensuing marginalisation of federal and state parliaments acts as a further constraint. As one official put it,

COAG can decide anything and the first ministers around that table can have a lot more mandate to decide things without having to come back and reference their cabinet. (Interview 17, State central department)

The intergovernmental agreements arising from that framework form another important constraint, with state officials frequently complaining about their ongoing negotiation envelope offering them little more scope than an incremental debate about whether particular components or clauses have departed from the overall aspirations of that agreement or the IGA FFR.

Finally, one should not underestimate the importance of resourcing for the conduct of intergovernmental management — or the lack of it — as a constraint on agency. Resourcing a dedicated intergovernmental function is one of the most important ways the states can effectively partner the Commonwealth on policy rather than simply accept its directions. One official worked in a jurisdiction that had allocated some 20 staff to a branch dedicated to intergovernmental relations, because not doing so meant

where you're grappling with big agendas that the Commonwealth are running it is really difficult. Ideally you would want to be not just keeping up with the agenda as it moves but actually be well ahead of it and have alternative agendas. I don't mean that in the sense of having a rival thing; it's actually about having other good ideas to put on the table so that it's not all about what the Commonwealth is bringing forward. The capacity of the states to be generating intergovernmental reform hasn't been very good. (Interview 16, State line department)

In the absence of such resourcing, informal networks may be limited in what they do. Generating the demand for resources is one of the benefits of the formal council system, including the availability of secretariats who take on a lot of the coordination work, allowing smaller jurisdictions to take on revolving chairmanship roles in senior officials' meetings.

Similarly, there is naturally a degree of autonomy that comes with seniority, particularly where those higher up in the organisation have access to information that their subordinates do not. Or, to take another example, state governments often have rules about where, when and how to engage with the Commonwealth:

Within the state we have comprehensive arrangements as it relates to the formalities and practice of engagement with the Commonwealth. So that's very tightly regulated, so there's no sort of freelancing. (Interview 18, State central department)

In summary, these accountabilities, together with the jurisdictional and organisational directions explored in Chapter 4, set the flags, as it were, within which officials have to swim.

3. The capacity for agency is enhanced by experience and recognition.

Officials tended to ascribe their capacity, or that of their colleagues, to change individual policy directions or more systemic processes to their credibility and/or longevity in the system. ‘People listen to you because you’d actually been doing the work at the coal face’ as one official put it (Interview 31, State line agency). Technical expertise is often a prerequisite for successful engagement with practitioners and other organisations in the regulatory context. Similarly, officials who had worked for both the Commonwealth and a state or territory government appeared to have greater personal ‘capital’ and were seen as game changers. The counterpart to this is that when people have spent much less time in the intergovernmental world, they don’t have the trust in others, nor do others trust them to the same degree, which reduces their capacity to take autonomous action.

4. Trust is a necessary pre-condition for the exercise of agency.

Many officials commented on the importance of trust as the *sine qua non* for effectively carrying out intergovernmental policy work.

The capacity for agency is, first, heavily dependent on the mutual trust one has in one’s minister and more senior colleagues, including those in other jurisdictions. A relationship based on mutual trust allows one to take risks, as one official put it when describing a negotiation process over a national partnership:

All of the way leading up to that meeting I had no authority for the negotiations or the discussions that we were having. So I had to be absolutely upfront that it was completely without prejudice and I had no authority, but that it was the way I played it. (Interview 21, Commonwealth line department)

Allowing for agency based on trust applies to one’s subordinates, as well as upwards. It was common, for example, for officials to be given a degree of autonomy in negotiations based on compliance with an overriding directions and strategies. One senior official described giving a subordinate

complete latitude so long as it didn’t go outside the funding envelope and the proper evidence-based outcomes that were required. So long as he didn’t do that, then I didn’t care how he compromised; I didn’t care how many meetings, I didn’t care. But I would expect him to tell me how it was going (Interview 41, Commonwealth line department)

While mobility within and between jurisdictions contributes to the development of networks, high rates of turnover were frequently identified as a barrier to the development of such trust. Turnover in personnel not only disrupts the establishment of personal relationships generally, but also makes it more difficult for the bureaucracy to provide the ‘corporate memory’ in support of the ministerial councils, particularly where established interpretation of earlier decisions taken in those forums were abruptly revised by ‘newcomers’; and because trust requires a shared expertise based on longstanding experience in a particular policy field.

In the intergovernmental areas you find that every year it’s a different set of people who’ve got very little corporate knowledge or background in this type of work and they have to pick it up. The Commonwealth has got good people but they don’t have the knowledge or the feel for why certain arrangements were established. They can be struggling. It means that we sometimes feel that the Commonwealth, for example, don’t really know much about fiscal equalization or how their expertise can be used. (Interview 25, State central department)

Interviewees were also asked to identify particular examples of how they had exercised agency, and with what outcomes. Not all of them saw the exercise of agency as a significant part of their role, or at least not in all contexts. Many officials struggled to think of examples where they had ventured ‘beyond the flags’ or the ‘red line’, and expressed the view that the systemic values of Westminster-style serial loyalism did not allow for that role, except where such agency might deliver better outcomes for their ministers.¹⁰⁹ Consequently, some interviewees expressed the view that officials exercise little or no personal agency in pushing back against political, jurisdictional or organisational constraints.

Indeed, some middle managers in particular felt that, given the limited information their positions allowed them on overall jurisdictional and organisational priorities and directions, it would be inappropriate to pursue individual strategies and goals. Such boundaries on personal agency were particularly relevant for major policies that were high on COAG’s list of priorities:

with the highest profile and most difficult pieces of work you have negotiating strategies which go to cabinet and you operate within those. Variations from that need to be really, really carefully worked through, both up the line within a central agency but also with line agencies and line ministers as well. So the flags are probably a little bit clearer there. With lesser profile items, you probably had a bit more autonomy. There would be more general principles of intergovernmental relations informing that. (Interview 16, State line department)

Many officials, however, were at pains to present examples of where they had put their personal

¹⁰⁹ In so doing, they are, of course, echoing the controversy over the concept of ‘public value’ and the critique by Rhodes and Wanna of the notion ‘that public managers should play the role of Platonic guardians deciding the public interest’ (2007, p. 407).

stamp on a policy direction or implementation. Under certain conditions, they argued, officials were able to develop alternatives even where the directions appeared to be set by one or more of the factors enumerated in the research data. In effect, to return to our central metaphor, these officials looked for ways to ‘set the flags’ more widely apart and even to swim with a degree of autonomy beyond them.

In many cases this involved bringing about changes to a particular policy process through their personal intervention and peer communications. This frequently involved wearing the ‘two hats’ described above, in pursuing national and systemic as well as jurisdictional interests and directions. Officials may also convey information that they have gleaned from their colleagues in other jurisdictions to brief their ministers in a way that reflects such national systemic outcomes that go beyond that government’s political directives, or even that jurisdiction’s interests.

Because we write the negotiation strategy as well and put it up, we do a lot of that thinking about what are our red line issues. We suggest that to the minister. It’s up to them to agree or not. We do try and always give ourselves quite a lot of - well, sorry, as part of that we have optimal positioning, our preferred positioning and then our fall back. (Interview 15, State line department)

In the case of the NDIS, for example, officials from the larger states described how they had inserted smaller states’ interests into their first ministers’ briefings, to ensure a better national outcome.

There are things as part of the NDIS that would absolutely be in New South Wales’s best interests or Victoria’s best interests, but would be to the detriment of a smaller state, where they don’t have the market and the providers within them. People don’t acknowledge that the biggest states do often take a step back and actually think, ‘If we want to make this work from a whole-of-country perspective, what do we have to step back from to encourage the smaller states to be part of this process?’ (Interview 19, State central department)

Similarly, in environmental policy, the lack of substantial funding for agreements opened up the opportunity for a national approach to emerge. One senior official considered they had played a pivotal role in this situation:

I pushed that very hard. There’s always a lot of resistance in systems, especially when you’ve got to say, ‘Let’s do something across the federation.’ Others will say, ‘Well, what’s in it for me? Why should I bother?’ I overcame that through persuasion and saying, ‘This is good for the environment.’ (Interview 30, Commonwealth line department)

At the systemic level, officials bring about change in the way they conduct intergovernmental management processes, and in that way affect policies more generally. As one official put it,

by demonstrating that it can be done, I hope to embed it. Other departments that are not related to us, are coming to talk to our department and us together to say, 'We've watched how this is happening. How do we achieve this?' The basis of it is culture. (Interview 12, State line agency)

5.8 Chapter summary

In examining how officials understand the practice of intergovernmental management, the interview data presented in this chapter contained two surprises.

The first was the clarity and strength of the idea of intergovernmental management itself. Consequently, this idea formed the basis of a 'logic of appropriateness' with which practitioners pursued not only the given policy directions and roles, but adopted a range of strategies that demonstrated their commitment to the federal system as a whole.

The conclusion to Chapter 4 summarised two rule sets that emerged from the structural analysis: one which supports systemic stability and process, and one which supports change and innovation. As I foreshadowed there, the 'two hats' officials adopt and their perception of intergovernmental management as a domain that is separate from political concerns or the interests of their jurisdictions generates a sense of stewardship over the system that runs alongside, and may conflict with, their services to the political executive.

The second surprise in the data lay in the extent to which officials adopt techniques and tactics to push back against the range of constraints on their personal agency. (Not all of them do so, of course, at all times or to a significant degree; the role of such gatekeepers nevertheless plays an important stabilising role explored in the next chapter.) These strategies and concerns are summed up in the metaphor of swimming between widely or narrowly placed flags, and sometimes beyond them, that the final section of this chapter described.

The chapter has found a complex relationship between the structures and constraints detailed in the previous chapter and this one, and the individual agency of the officials who work in and with them, with the rules explored in this chapter providing the guidance as to how these relationships are to be navigated. Four rules in particular emerged from the interview data as crucial guidelines:

1. *Information exchange, as a primary vehicle for the exercise of agency, depends on such exchange being conducted in an apolitical manner.*
2. *Opportunities exist to shape organisational and jurisdictional strategies but are subject to structural accountabilities.*

3. The capacity for agency depends on the experience and recognition one has earned in the intergovernmental system.

4. Trust is a necessary pre-condition for the exercise of agency.

As argued in Chapter 4, structures generate the very rules that are the basis for agency, even where they are being pushed against. As we have seen, sometimes agency works with, and is supported by, structures and processes, using them as a platform. Agency may be inherently conservative, directed at preserving systemic stability, retaining policy momentum, or institutional memory. In such cases, innovation may be directed at preserving a normative status quo, and in order to do this, actors may need to re-engineer their organisations and their work in complex ways that, Jabko and Sheingate argue, may be overlooked in more standard approaches to incremental change (2018, p. 313).

Moreover, as this chapter has shown, the effectiveness of federal structures and processes depends on the agency of officials working in and on them, to find ways past the constraints and, sometimes, to work against the prevailing direction set by political and jurisdictional interests.

At other times, agency is exercised by working against the prevailing directions set by one’s government, jurisdiction or organisation, or to rebuild some part of the system that is not functioning well.

How this personal agency is applied to strategies and practices in the formal and informal settings of the federation is a matter the next chapter examines in detail.

Chapter 6

‘It’s I-o-r-e, not I-a-w’: ideas, norms and values in intergovernmental management

6.1 Introduction

The analysis conducted so far of the practices of bargaining and negotiation, joint problem solving and network building only provides a limited insight into the choices practitioners make between the alternative strategies and options available to them as they go about these tasks. Even routine aspects of intergovernmental management involve more than one overarching set of ideas and values, and consequently require choices to be made about them and between them. We therefore need to establish how and why officials choose their strategies and the implications of those choices for the federal system as a whole.

Accordingly, this chapter explores the ideational layer and its manifestation in what Benz and Broschek call ‘the federal political discourse’ (2013, p.6). They go on to note that tensions between this layer and the social and institutional layers within federal systems are an important source of federal dynamics (2013, p. 9). Inwood and his co-authors also highlight the importance of the ideational context for policy making, arguing that ideas about intergovernmental relations, the economy, public service and particular policy problems ‘come to life’ in the context of the institutions in which they work (2011, p. 37). They too see the interplay between ideas and institutions, mediated by the perceptions, opinions and perspectives of intergovernmental managers, as an important source of intergovernmental policy capacity and the trajectory of intergovernmental relations (2011, p.79).¹¹⁰

Accordingly, this chapter explores how practitioners’ ideas and values reflect and are shaped by federalism’s formal and informal structures and processes. Understanding how this works in the Australian context allows us to see how new policy ideas and management practices are introduced to practitioners as these structures and processes change. At the same time, the chapter tests the proposition that changing the discourse changes the institution: when a senior official says ‘let’s do this differently’, others in his or her organisation, and colleagues in other

¹¹⁰ Although Benz and Colino suggest a limited role for ‘paradigmatic change of ideas and values regarding the constitution’ as a source of systemic change (2011, p. 395), the following discussion associates the ideational layer with Burgess’s much broader examination of ‘federal values and principles that inhere in the very idea of the federal state’ (2012, p. 21), not least among them being a commitment by the constituent units and their representatives to the overall needs of the larger system; very much in line with the ‘stewardship’ noted in the previous two chapters.

jurisdictions, are empowered to change the way things are done in ways that may extend beyond that specific policy process. In effect, the argument here confirms Inwood's and his co-authors' view that 'a richer definition of intergovernmental capacity...grows out of the intergovernmental officials' experiences and perceptions' (2011, p. 415).

The chapter is structured as follows. First, findings are presented on the sources and content of officials' ideas, values and norms about the federal system as a whole, and in relation to their respective jurisdictions. The chapter then goes on to the specific ways in which practitioners apply these ideas, values and opinions to the policy problems and solutions that confront them.

6.2 Ideas about the federal system

An early study of Australian intergovernmental relations in the mid-1950s found that achieving cross-institutional co-operation is complicated by the fact that 'officials have conceptions of what their proper role is and they are often reluctant to deviate from this 'role' as they conceive it' (cited in Leach 1976, p. 9). As recently as the Abbott government's Federation Review of 2013-15, de Carvalho attributes at least some of the reasons for its failure to 'a genuine belief' among Commonwealth officials

that the default tactical position of states and territories is to take as much Commonwealth money with as little accountability for how it is spent, and that therefore states cannot be trusted to deliver better outcomes to citizens. (2018, p. 8)

Despite some empirical evidence to support this view,¹¹¹ other studies have found that officials strongly support the notion of shared responsibilities in the federation (Smith & Brown 2017, pp. 26-27). To test these propositions, the interviews explored the interviewees' overall perceptions of the federal system and how their strategies were informed by these views.¹¹²

On that basis, the data suggests that de Carvalho has simplified a much more complex and

¹¹¹ For example, Bruerton's and Kildea's recent survey of officials found their attitudes posed more significant barriers to federal reform than any other factors, including structural (2017, p. 220). However, it should be noted that they found such attitudes operating at both the Commonwealth and state levels, not just one or the other, with self-interest and an unwillingness to give up power the major issues.

¹¹² On a methodological point, I note Cho and Wright's acknowledgement (2004, p. 452 n.1) of the need for further empirical research into the relationship between such perceptions and objective, measurable causal factors such as whether the fiscal relationships between levels of government has a causal effect on such perceptions; or the dynamics of different policy sectors, such as redistributive versus developmental (Peterson 1986). However, I share Cho and Wright's rejoinder that, *pace* the need for further research along these lines, 'perception, or how administrators view the world, guides their actions and their relationships to other actors' and is therefore an organisational reality worth exploring.

varied set of perceptions among Commonwealth officials, and the corresponding beliefs among their colleagues in the states and territories. As a result, the adversarial view he confronted points to only one, albeit an important one, of many stances officials take in their work that leads to greater or lesser cooperation with other jurisdictions.

Such variance is, first, the product of how such perceptions are formed. Officials do not simply absorb or imbibe their attitudes in some way from the prevalent public service culture in which they work. Their views of what is important about the federal system, its chief characteristics, issues, benefits and costs, are constructed, episode by episode, by the formal and informal structures and processes of the federation, and by their socialisation into the intergovernmental roles they play in these structures. Consequently, there are distinct differences in how they view the federal system based on the particular structures and processes with which they are most concerned. Analysis of the interview data indicated four key sources of practitioners' ideas about the federal system.¹¹³

First, the formal governance structures of the federation in COAG, its ministerial councils and their supporting officials' meetings generate a distinctive set of ideas about the federation. The bargaining and negotiations that such meetings entail, and the communiqués that concisely summarise their outcomes, shape the perspective of officials whose work takes place in that context. These officials, who are working predominantly in central departments or who have extensive experience of intergovernmental relations in particular policy areas, view such meetings as having an exceptional quality.

You kind of get some of the best and brightest in the bureaucracies in the land involved in the COAG space, and it's a cracking pace. Intellectually, the meeting process, the kind of calibre of the way issues are discussed and strategically thought through et cetera, it's a really cracking pace. So you do get some of the best and brightest, I think, sitting around that table. (Interview 22, Territory central department)

There was a clear divide between officials on the implications of the adversarial conflict between the Commonwealth and states that looms large in their perceptions. One group saw these tensions as short term, emerging routinely from senior executives' meetings. Such disagreements are not seen as the source of long-standing communities of interest from which jurisdictional identities and cultures might emerge.

Our alliances are always temporary and always based on self-interest. It is entirely driven by the

¹¹³ I would add that although I have identified these sources separately in what follows, they are not, of course, mutually exclusive; I will return to this point below.

issue. (Interview 18, State central department)

Consequently, disagreement is seen as a natural aspect of a federal system, which can be overcome through goodwill and good process.

At the end of the day my feeling is we're all in it for the same thing. All levels of government, all the different states, they're all trying to provide good outcomes for their citizens. (Interview 2, Commonwealth central department)

Another group, however, expressed some doubt about whether it was possible to appeal to shared interests as a way of overcoming the disjunctures of federalism. They argued that the federal system's allocation of different responsibilities to the Commonwealth and states generated intrinsically different interests. The Commonwealth's insistence on holding the states accountable for inputs and outputs rather than policy goals undermined the potential for meaningful partnership.

The perception that the federal system is characterised by fragmentary, competing claimants for a limited share of resources was typically expressed by those with long experience of negotiations. As in the case of this state government education department official, they tend to be pessimistic about the system's capacity to deliver national policy outcomes:

we can't have a national dialogue with states and territories about education policy because we're all different about what our shares are and what we might be entitled to and what deal we might have done (Interview 34, State line department)

Finally, in commenting on the idea of the federal system as an arena, officials tended to dismiss the motivations attributed to them by public choice theory:

It is commonly said that the Commonwealth and states often have a tussle over power. In defence of both parties, it's not always just because people want power. I think often the officials as well as the politicians think, 'If only I ran that system,' whether it be schools or something else, 'it would be better.' I don't think they just want to wield power for their own sake; I think they think they could do a better job. (Interview 16, State line department)

A second fundamental source of practitioners' perceptions lies in the agreements that structure the relationship between jurisdictions. Commonwealth and state government specialists on intergovernmental agreements focus on the normative disjunction they perceive between the aspirations of the agreements framework and the realities of the documents before them. In particular, the IGA FFR is seen by officials at both levels of government as the embodiment of cooperative federalism, with its emphasis on outcomes rather than input controls, as a way of giving the states greater flexibility in delivery.

Interview data confirmed previous research that argues the current practice of fiscal federalism in Australia falls short of those aspirations.¹¹⁴ Interviewees described one side of this tension as a national government attempting to over-prescribe delivery methods and impose onerous reporting requirements, or a national government forced to seek greater accountability and transparency because of state government cost-shifting and defection from the terms of the bargain. The other side is characterised as states attempting to maintain a degree of flexibility and independence in service delivery, or as states acceding to the Commonwealth's demands in order to get their hands on the money. Overall, then, most practitioners who commented on fiscal relations saw this dynamic tension as a key characteristic of the federal system.

I don't think you'd find many commentators who would think that the practice of Commonwealth-state relations reflects the principles that a reasonable-minded person would understand from reading it. That's been something that was a known challenge since the IGA was agreed, and we've been moving incrementally away from that through individual negotiations since it was struck. We have the marginal conversation, the incremental conversation each and every time. (Interview 17, State central department)

An important qualification to this perception is that it does not simply follow Commonwealth-state lines; Treasury officials at both levels expressed the view that their line department colleagues were reneging on the IGA FFR's spirit, by seeking or agreeing to detailed conditions:

they're nutting out these agreements and then it's in our inbox and we sit there going, 'What's this? What's this?' So the idea of Commonwealth versus states is a bit too simplistic. There's a bit of lateral line versus central. (Interview 25, Territory central department)

However, many officials also take a more utilitarian view of intergovernmental agreements, and are dismissive of their normative aspirations. For example, the competition and productivity reforms announced at the April COAG meeting were criticised because there were no resources provided for these collaborative endeavours:

It's an IGA of principles. There's no money attached. There's no process attached. States and territories are generally quite cynical about intergovernmental agreements. There's not much meat attached to them. It's like every process: we try and work out where we're going to win and fight our battles and things we're just going to let go through to the keeper. (Interview 19, State central department)

The collaborative tendencies noted earlier stemmed as much from a pragmatic desire to work

¹¹⁴ See, for example, Davis & Silver 2015; Department of the Prime Minister and Cabinet (Australia) 2015; McQuestin 2014; Harwood and Phillimore 2012.

around this ongoing tension and deal with its implications for specific agreements than any philosophical commitment to the principles of federalism or subsidiarity.¹¹⁵ The problems in managing the agreements system are seen as problems of managing the boundaries between coalitions of rational interest, in so far as they play out in the practices associated with drafting agreements, ensuring they conform with guidelines and their provisions meet the executive's requirements. As a senior Commonwealth official put it:

I have always felt that the worst thing you could do in a Commonwealth-state agreement was to have one level of government do something and the Commonwealth do another thing. As soon as you've got a boundary, you've got boundary disputes, and that means you've got cost shifting. (Interview 41, Commonwealth line department)

A third source of federal perceptions lies in the history, interests and issues that characterise particular policy sectors. Officials who have worked with colleagues in other governments in a particular policy area over long periods, or at least intensively on a major policy process, are likely to view the whole system through the lens of that experience. Thus, for example, those officials who reported a successful process or outcome in one case tended to take a more optimistic view about collaboration overall and were more likely to describe their interest in finding ways to share evidence and data rather than finding ways to shore up their position. One state official was dismissive of the adversarial view of the policy formulation process that others saw as typical:

you'll get phone calls from your colleagues in Western Australia or New South Wales saying, 'We're proposing to do something. Have you done this? What have you done?' And there's a view that you can share that with confidence, which is very important because it's basically allowing policy formulation and policy development to develop in confidence. There isn't an adversarial view generally. (Interview 35, State central department)

In contrast, however, those working in policy fields characterised by a high degree of political salience and tension tended to hold more pessimistic views overall (suggesting that these philosophical frameworks have a temporal dimension and may change over time, particularly as perceptions are modified by the impact of other sources). For example, infrastructure funding is a highly sensitive policy area because it is a key element in horizontal fiscal equalisation and an area in which the Commonwealth has significantly extended its control through funding agreements (see, for example, Pickernell et al. 2008). A Commonwealth

¹¹⁵ An example of the 'pragmatic federalism' Hollander and Patapan describe, characterised by 'a direct engagement or confrontation with pressing problems, an engagement unmediated by larger theoretical concerns' (2007, p. 281).

official expressed concern that a lack of collaboration over infrastructure announcements was generating intergovernmental tensions ‘which then permeate other Commonwealth-state discussions’.

it encourages arguments between the two levels of government, because one level of government is seen as painting the other into a corner, they're going to be the baddies if this thing isn't delivered, because they're the ones that haven't come to the table. (Interview 2, Commonwealth central department)

Finally, the intergovernmental networks explored in Chapter Five are a fourth source of overarching ideas about the federal system. Again, it is the experience officials have had with particular networks that colours these ideas, particularly because the management and maintenance of intergovernmental networks involves entrepreneurship and agency. Consequently, officials drawing on their networks for an idea of federalism in general tended to express more positive views about their role and the system generally than those officials whose ideas were prompted by other aspects of the system.

At the most generalised level of thinking about the federal system, where intergovernmental relations and management are seen as separate but related domains of activity, relationships between officials are seen as a vital component of the system's effectiveness:

There's a sort of planets aligning thing that when it works well, the officials' structure and the MINCOs work really well together, regardless of the political complexion. Sometimes it's a key relationship between a couple of ministers perhaps on the MINCO. It might be that there's an alliance formed and a commitment to outcomes at the officials level as well so that they can work in harness together. Sometimes it's despite the structures and the ministerial relationships that officials are determined to have something work. (Interview 21, Commonwealth line department)

Many officials saw their networks as an embodiment of the separate bureaucratic space in which intergovernmental management operates, as described in Chapter 5. An official closely involved with HEPA described it as

the space where we actually say, ‘Actually, there's no good or bad in any of this.’ Lift your gaze; there might be local personalities et cetera. But you can lift it all up so we can agree around how we communicate these things, what's the language we use. (Interview 14, State line agency)

6.3 Ideas about jurisdictional cultures and roles

Officials' ideas about the role their jurisdictions play in the federation, and the federal culture their individual jurisdiction displays, are an important influence on their practice and a guide to the appropriate exercise of agency.

The interviewees described the role their jurisdictions play in the federation as more than just

instrumental responses to particular exogenous events. Rather, officials felt they could identify a particular state's federal 'persona' over time, as an overriding and consistent stance they and their colleagues adopted, that overrode individual organisational interests, and occasionally ran counter to the particular views of their political executives. These jurisdictional personas were not always described in positive terms, particularly by colleagues observing such cultures from the perspective of other jurisdictions, although there was a remarkable congruence between the way officials described their own jurisdiction and how this was perceived from 'outside'. The one exception was the Commonwealth: it was difficult to discern a particular Commonwealth federal culture that could be distinguished from its role in particular structures and processes. (The significance of this finding will be discussed after the following analysis of the state and territory cultures.)

As with the data on the federation's structural factors, the interviews explored how these jurisdiction-specific cultures informed the interviewees' individual strategic choices, and how, or why, these cultures went through trajectories of change.

In terms of the most prevalent perceptions, New South Wales, because of its size, is seen as the go-to partner for national policy development. This role, illustrated by the way New South Wales is always seated beside the Prime Minister at COAG, or beside the relevant Commonwealth minister in council meetings, is one that its own officials, and those in other states, recognise as a significant guide to the formation of their individual and organisational negotiating and networking strategies. As one of its senior officials explained:

There's a bit of an element of what's good for the nation is good for us, whereas if you were sitting in Tasmania, South Australia or Northern Territory, you might be much more in the world of saying, 'Well, I get all that, but if I can shift the dial of my proportion of the action, that matters more for me sometimes than the national game.' (Interview 10, State central department)

The policy stance that emerges from this perception is that of being a contributor to the Commonwealth's agenda, rather than an adversary, balancing the sub-national and national political agendas. A Victorian official, sharing the view that the larger states have a role beyond simply pursuing their own agendas, reiterated the idea of intergovernmental management as occupying a space of its own, distinct from the political agenda:

We always reflect the views of our Premier, but both sides of politics have seen the role of Victoria and New South Wales through the lens of nation building. What is often in our best interest might not be in everyone's best interest. It's our job to play a role that the Commonwealth sometimes can't in trying to bring some of our state and territory colleagues along with us on reform journeys. (Interview 19, State central department)

Such cooperation ‘has to be managed carefully’, as one official warned, given the risks of eroding the states’ capacity to push back against the Commonwealth’s domination of the policy agenda:

New South Wales needs to make sure that we’re not either seen to be or actually just being a yes man for the Commonwealth. We could actually end up losing the support of our state and territory colleagues if we’re seen to be too much in cahoots with the Commonwealth. So that’s something that we’re consciously managing. (Interview 9, State central department)

The opposite of the idea that a state is representative of a broader part of the national polity is the idea of its exceptionalism, based either on a jurisdiction’s particular characteristics or because of its policy leadership. Thus, although Victoria is second only to New South Wales in terms of its population and economic clout, Victoria sees itself — and has a reputation for — being less of a partner and more ‘bolshie’, as an official from another state put it:

Victoria can afford to be out there. That’s the very nature of the jurisdiction. They’ve got a large population, they’ve got significant money. They can push things and afford to piss off the Commonwealth if they want. (Interview 31, State line agency).

Again, these perceptions have an impact on the way state officials construe their jurisdictional interests, and consequently their negotiating and policy development stance. ‘Victoria always thinks it’s the best at everything’ one official from the Commonwealth sneered, while a Victorian official described her state as being

like that annoying very smart school kid who believes he always has the right answer, the best system and that nationally everyone should be - we take the principled approach et cetera, but we’re not necessarily the most popular because we don’t necessarily then get the good deal, which goes to factors that are important. Victoria’s persona has been very much about the nerdy school kid trying to do the good policy and maybe missing the trick on the ability to make the deals. (Interview 15, State line department)

The idea that a state is ‘different’ can influence its negotiating stance in a number of ways. It may result in a policy veto, as Western Australia is notorious for applying. A state may resist efforts at harmonisation because that would mean a decline in what it perceives as its own higher standards, or simply signals its preference for pursuing its domestic agenda rather than being deflected to national (read ‘Commonwealth’) goals. A ‘common Victorian refrain’, as one official from that state put it, is that the national agenda has a retrograde effect on its reform efforts. In the area of harmonising policies on native vegetation, for example, a Victorian official argued:

that would mean Victoria switches off all of that because New South Wales and Queensland, by comparison, don’t have all that much, Queensland very little now. So you end up harmonisation

is a foil for, ‘Well, we need not to switch a whole lot of stuff off here.’ (Interview 20, State line department)¹¹⁶

Similarly, in relation to health funding, a Victorian official argued

we put a lot of effort into reform only for the states that have not invested in this area to get all the money because they’re the ones who are further behind. Victoria has often felt that we have been punished. It’s first mover disadvantage. We’ve invested in our systems and we’re ahead of the game. Therefore, we don’t get our estimated per capita share of funding. (Interview 15, State line department)

However, state exceptionalism can also mean, on the positive side, that it plays a leading role in policy development, trialling and implementation:

what we try and foster as much as we can in all of our people is they feel they have the organisation’s backing not only to represent Victoria but to put on the table more interesting, innovative reform ideas. (Interview 19, State central department)

Ideas about the role of the smaller states are more complex than simply seeing them as passively accepting whatever the Commonwealth and one of the larger states have cooked up. South Australian officials, for example, see themselves — and are perceived by their colleagues in other states — as representatives of a bloc of smaller states who ‘punch above our weight’ because of their experience and initiative:

We were seen as a mediating state between the east and the west and also between New South Wales and Victoria and Queensland. We brought a certain amount of comfort. We were seen as a sort of almost impartial party. (Interview 36, State line department)¹¹⁷

This role for South Australia has led to it being perceived as a useful partner in particular policy development strategies and processes. For example, officials from New South Wales and South Australia formed a partnership to work on policies relating to the GST, health and education, before these were discussed at COAG:

There was a lot of analysis and rough thoughts and ideas that we were sharing bilaterally that we weren’t sharing with the other jurisdictions. We’d kind of use them as a critical friend. ‘Let’s make sure we understand what each other’s message is so that any response to that is informed.’

¹¹⁶ A key example of such resistance to harmonisation is the perception by Western Australia and Victoria that it was not in their interests to adopt national model occupational health and safety and workers’ compensation laws that were originally foreshadowed in the National Partnership Agreement to Deliver a Seamless National Economy of 2008, on the grounds that (McClintock 2013, p. 68).

¹¹⁷ In personal correspondence with me, a senior official from the Australian Capital Territory also described that jurisdiction as ‘punching above its weight in nearly every aspect of Commonwealth-State relations, whether it be at COAG and its supporting fora or the Council on Federal Financial Relations’. He attributed this, at least in part, to the ACT’s unique circumstances as the national capital, home to the federal public service and partnership with the federal government in responsibility for the national institutions. As a result, he noted that the Territory had made a rapid transition since it became self-governing in December 1988 to becoming a fully independent member of the federation (personal correspondence dated 12 April 2017).

(Interview 9, State central department)

In the area of domestic violence policy a South Australian official compared her cooperative role with that of the Victorian tendency to being ‘bolshie’ noted above:

That’s not the way we’ve done business. Because we’ve been in this space at the national level for a while we are sort of looked to as an ally, like someone you want to test things out with before things are floated in a bigger group. I get phone calls to say, ‘Look, just was wondering what you’re thinking about this, how we might want to play that?’ (Interview 31, State line agency)

However, literally at the other end of the table from New South Wales, the Northern Territory’s officials struggle to resource an ongoing intergovernmental capacity.

I’m always in the least powerful seat in the room, which is interesting: if you want to actually say anything and engage with the person who’s chairing the meeting, you need to lean sideways and talk on an angle. (Interview 22, Territory central department)

This does not preclude them from playing an important role in policy development, because of the salience of indigenous policy for the territory, and because the rotating chairmanship of certain ministerial councils, supported by intergovernmental secretariats, gives them a capacity they could not support internally.

In general, the strategies for smaller jurisdictions are based on a judicious choice of the areas in which they can best make a contribution, rather than being required to contribute overall. As one senior official who had worked in South Australia put it,

I was lot more selective in my contribution because you were a junior member, a relatively junior member, of the federation. It just meant that your contribution had to be unambiguously authoritative and well informed and persuasive, but you weren’t doing it as often as you would as New South Wales and Victoria. (Interview 18, State central department)

Ideas about what role a state or territory should play in the federation may change over comparatively short periods, often because of changes to the political and fiscal environment. As a Victorian official recalled, the exigencies of budget repair and the need to maintain a domestic policy agenda changed her state’s federal culture:

There was a culture from 2005-06 and then onwards to a declining degree, that Victoria saw itself as the state to set the agenda in terms of reform priorities. But the environment in which that plays out really affects it. At the time that we were seeking to lead a policy agenda, it was a very different fiscal environment, so we were dealing with a quite different Commonwealth government. Everybody had space to talk about policy reform. (Interview 17, State central department)

These changes, as she describes them, lead to ‘very different conversations’, and officials play different roles in that conversation, with significant consequences for federal dynamics in

changing the tone and the outcomes of intergovernmental relations.

These changing ideas about a jurisdiction's overall role in the federation presented one of the clearest examples of how officials thought about federal dynamics 'from the inside', as it were. Given the longevity such officials tend to display in their role, many of them were able to describe how these ideas, and the practices to which they gave rise, had followed trajectories of change. For example, the relative roles played by New South Wales and Victoria have shifted over time, particularly as officials at the head of their respective Premiers' Departments have brought in experience from working in the Commonwealth and/or other states. Many officials recalled a time when Victoria led the push by the states for the National Reform Agenda in the mid 2000s, under the influence of its then head, Terry Moran, and a reformist Premier.¹¹⁸

Victoria was the dominant player at the state level in the federation. It was a deliberate attempt to position Steve Bracks as a national figure on the back of some very, very good work done at the state level. There was dysfunction in New South Wales from 2008 through to 2011 - the ineffectiveness of New South Wales in intergovernmental relations was apparent (Interview 18, State central department)

The Victorian case highlights that ideas about what a state's role should be, generated by the political executive or by senior central officials, often fuel the resources provided for specialist intergovernmental management units (rather than other way round, as the budget-maximising tenets of public choice theory would suggest).

the type of resource I had in Victoria where they placed a high value on the intergovernmental work and in doing that really well compared to other jurisdictions was pretty significant. I had a branch of 20-plus people working on intergovernmental relations (Interview 16, State line department)

These ideas about a jurisdiction's role are not simply inherited or absorbed as organisational DNA; as with the ideas about the federal system overall, they are grounded in concrete federal structures and processes and change along with them. Thus, for example, the notion of a 'lead state' is central to the way negotiations over agreements and the processes of policy harmonisation are conducted. In developing major agreements, there are tactical advantages

¹¹⁸ Victoria's leadership of the National Reform Agenda is detailed in Brumby (2009; see also Phillimore and Fenna 2017, p.605). Other officials recalled that, under the anti-Commonwealth policies of the then Premier of Queensland, Bjelke-Petersen, they had very little freedom or ability to discuss, negotiate and exchange with other states, let alone the Commonwealth. But that has probably changed and Queensland would probably be now seen as part of the eastern seaboard triumvirate of New South Wales, Victoria and Queensland. (Retired senior official, Interview 1)

for the Commonwealth to work with its selected lead state in terms of obtaining the necessary data, gaining intelligence and input on the issues that are likely to prove difficult, or simply to build a coalition of support. From the states' perspective, working as a lead state delivers early adopter benefits, such as concessions that are not available to other states when they sign up, or being able to shape the agreement in a way that suits the state that may not be available subsequently.

One of the most important structural sources for these ideas about a state's role lies in the history of particular policies as they are adopted and implemented by that state. Over time, variation in approaches to policy and service delivery (particularly the degree to which a state's services are centralised or decentralised) display path dependent characteristics that make them very hard to change, and a major obstacle to harmonisation and coordination.

These individual policy histories can play a key role in determining when and how far a state may go in playing the lead state role, cooperating or applying a veto. In the case of the National Disability Insurance Scheme, for example, interviewees involved in the scheme's design described being confronted with a range of existing models and philosophies, ranging from Tasmania's highly decentralised, low-level state involvement, through to New South Wales' large investment in home-based care and institutional settings funded through the state government, with other states adopting a range of approaches in between these ends of the continuum. Officials were tasked with ensuring that the scheme could work for all jurisdictions despite these differences, giving the smaller states an equal say in its design.

I think people often don't acknowledge that the biggest states do often take a step back and actually think, 'Well, if we want to make this work from a whole-of-country perspective, what do we have to step back a little bit from and what are the things do we need to actually do to encourage the smaller states to be part of this process?' (Interview 19, State central department)

The importance of consensus in COAG and ministerial council decision making more generally also gives the smaller jurisdictions more of a say than their size might otherwise dictate. In the Heads of Treasury meetings, a Territory representative recalled

I never felt that my view was passed over. It was a very collective group of people and although you're always aware of the place of your jurisdiction, around the table there was never a sense of, 'Well, if you come from there, your idea's not very good.' (Retired senior official, Interview 1)

Finally, as noted above it was difficult to detect a clear Commonwealth 'culture' in the way state and territory officials could discern and describe theirs. One reason for this may simply be a matter of size – most state officials only get to deal with a small part of the Commonwealth

bureaucracy and are less able to perceive a general Commonwealth culture.

A view by state bureaucrats that the Commonwealth is arrogant, intrusive, and uninterested in good faith negotiation and collaboration permeates particular policy sectors and programs. For example, the requirement to design a common approach to the National Disability Insurance Scheme, given the variety of state arrangements mentioned above, may have resulted in a perception by the state officials that the Commonwealth was imposing a solution:

the goodwill has, as I said, evaporated, particularly with NDIS where we thought at the time going into it was a genuine national Commonwealth-state partnership. It's no secret what we think here in Victoria: it's a Commonwealth takeover and a very Commonwealth-driven approach to a welfare entitlement as opposed to an insurance model. (Interview 19, State central department)

Many state officials felt there was a culture of blocking initiatives and innovation at the Commonwealth level.¹¹⁹ The sources of this culture lie, first, in what is perceived as a generalised inertia, with no overarching direction for reform, particularly when seen in comparison with Prime Ministers who were prepared to use the federal system to drive reformist agendas. Second, change is seen as being more deliberately prevented in particular policy areas where the Commonwealth government has sensitivities, such as climate change:

at the federal level is there's a pecking order and the environment is well down the pecking order. So you can't do anything controversial because you'll get jumped all over, whereas at state level, it doesn't feel that hierarchical. It's more about who gets to be bold and do big changes. (Interview 13, State line agency)

As for the future, when asked about a collaborative approach on data exchange with the Commonwealth, a state official was sceptical:

I'm not sure there's a bureaucratic culture of approaching state governments in that way at a Commonwealth level. And I think we'd probably have to own up to a reasonable degree of suspicion when we were dealing with that kind of response. That does come back to vertical fiscal imbalance and the kind of negotiating context we've had to date. (Interview 17, State central department)

6.4 The 'practice modes' of intergovernmental management

So far, this chapter has explored the sources and diversity of officials' ideas about the federal system and how such ideas provide the basis for their intergovernmental practice. However,

¹¹⁹ These findings support the survey reported by Arklay et.al. which found that Commonwealth officials are more positive about their interaction with their state colleagues than state respondents are about interacting with federal officials, and state officials are also more positive about interacting with other states and territories than they are about their interactions with federal officials (2017, p. 111).

the research also tested the manner and extent to which these ideas affected the practice of intergovernmental management.

It would be all too easy to assume that these perceptions and ideas constrain individual agency, leaving intergovernmental management in a difficult, adversarial situation overall. The interview data, however, reveals complex, overlapping narratives and discourses that suggest at least the possibility of a systemic capability for incremental improvement and individual entrepreneurship, even if overall change in the federal system is glacial and highly exposed to political interests and dynamics. Moreover, most of those working in intergovernmental management have enough longevity in the role and mobility across jurisdictions to know that ideas, norms and values change, sometimes quickly. Consequently, the actions and strategies they adopt in response to a given situation are more varied, and the choices as to where and how they exercise their agency are wider than concepts of structural or cultural determinism might suggest.

In line with discursive analysis techniques, the interviews put the individual practitioners at the heart of the analysis of policy change by closely examining how they performed the tasks of intergovernmental management, and why they chose to do so in those ways. The interviews invited them to define the policy problems with which they were confronted; how they thought about the issues involved; what options they felt were available to them, what strategies they adopted, and upon what values and norms those strategies were based. Such discourse, particularly in so far as officials try to work with and influence one another, is indispensable for understanding the nature of policy change generally and, more specifically, the role of intergovernmental management in federal dynamics (Zittoun 2009, p. 67).¹²⁰

The interviews were coded accordingly, paying particular attention to linked metaphors and themes that individual officials tended to use repeatedly as a way of making sense of their complex policy environment.¹²¹

A set of five distinct and coherent ‘practice modes’ of intergovernmental management emerged from the textual analysis. Time and again, officials would bring the interview back to particular

¹²⁰ As summarised by Zittoun, discourse analysis ‘attempt[s] to reintegrate the subject, in this case the participant, into the heart of the analysis of policy change by taking into account not only the way a problem is constituted, but also the way a policy is defined. The actor’s discourse is considered to be the indispensable link which allows policy change to be understood’ (2009, p. 67).

¹²¹ The coding scheme I employed is detailed at **Appendix A**.

structures, processes or events that brought their role into sharp relief; they would do so using characteristic examples and metaphors that were distinct and very different from one another in describing options and approaches in the standard operating procedures of intergovernmental management.

As summarised in **Table 6** that is appended at the end of this chapter, these practice modes differentiate how officials relate to and apply their ideas and values about federalism generally to their work; how they adapt to their formal and informal context; and the processes by which officials rationalise their behaviours and the outcome of their behaviours to themselves and their colleagues. Practice modes are lenses through which individuals perceive or recognise opportunities, and then ways in which such opportunities are exploited or used through the adoption of strategies and behaviours.¹²²

It bears repeating, at this point, that these are not Myers-Briggs type personality indicators, or behaviours that individual officials consistently adopt whatever the context. Although officials tend to adopt a preferred, or dominant, ‘practice mode’ based on their broader perceptions of the federal system, the role of their jurisdiction, and their understanding of how a particular policy problem or issue should be dealt with, this is not locked in. They characteristically adopt other approaches when the context or problem is different, or when the formal and informal settings suggest other strategies. It may be more useful, then, to think of these practice modes as a palette of strategies, or, in Schmidt’s terminology, ‘policy solutions’; that is, ideas, values and norms about the federal system that legitimate, guide and shape their work in a given policy context.

Accordingly, the following sections outline these dominant practice modes or roles that officials tend to adopt, given a particular context, process and problem of intergovernmental management.

6.4.1 ‘We held the line’: partisanship

Partisanship shares with the following practice modes the notion of intergovernmental management as a separate policy space; however, the partisan perception is, first, that this space is severely constrained by the adversarial politics of intergovernmental relations; and, second,

¹²² My use of the term is linked to a broader theoretical focus on ‘practice’ that has emerged over the last two decades, that links wider social structures and institutions (in this case federalism) to meaningful established patterns of organisational behaviour and activity (eg Thornton et al 2012). Importantly, this body of work also sees practice as the locus for shifts in institutional settings and directions (Thornton et al 2012, p. 129).

that this has noticeably deteriorated over time. For example, one official used the metaphor of seating at ministerial councils and senior officials' meetings to tell its own story:

eight years ago, if we went to a ministerial council, the ministerial adviser was actually on the table behind. So next to the minister was the senior bureaucrat. And then probably about five years ago we went to our first ministerial council meeting where next to the minister as well as the senior bureaucrat was their adviser. I think that's a change and we will get more into it being very political and the decisions being based on politics. (Interview 36, State line department)

The key concern for this practice mode is adversarial bargaining, based on a perception of the federal system as an arena for playing out different interests, particularly where there are clashes and disagreements between jurisdictions. Intergovernmental management is seen as a zero-sum game in terms of resources and interests.

The factors that are important to us are getting as much money out of the Commonwealth as possible; policy autonomy, which is us as a state deciding what's the best way to achieve the investment outcome; concepts around state sovereignty as well which play out in how much reporting we're going to do. (Interview 15, State Line Department)

The structures in which partisanship comes to the fore as a practice mode tend to be the highest level formal meetings and negotiation processes, such as COAG, Ministerial councils and big funding negotiations. The venues and processes of bargaining are at the forefront of how the federal system is perceived through this discursive lens and form its core concerns. As this official sees it, the purpose of getting together with one's colleagues is not to develop an evidence base or a community of experts, but as a protective device:

I'll call a meeting of my colleagues in other states and territories and we'll have a discussion, so what do we need to do to get across the line to get a shared view, because the Commonwealth, they've got tried and true tricks, like trying to divide and conquer and do other things. (Interview 5, State line department)

This mode reflects the concerns of rational choice theory, with its emphasis on how strategic choices are constrained by an exogenous set of preferences and interests. Not surprisingly, then, the practices coded as partisan involved noticeably fewer instances of personal agency and impact than those coded against the other modes; when officials talk about adopting this mode, it is often couched in agonistic terms, such as this official's description of how and why they 'stood up to' the Commonwealth:

We got this grant to implement the multifunction polis. I was looking at the numbers: 'Where's our \$4 million?' And we didn't get \$4 million because the Commonwealth needed a million to oversight the \$4 million. I found it amusing at the time because it was very political. I actually rang up the Commonwealth (Interview 34, State line department)

At the highest level of coordinative discourse in which officials are thinking about the system as a whole, partisans tend to focus on the zero sum nature of fiscal federalism, the disbenefits of vertical fiscal imbalance, and the implications of this for accountability and performance management. For example, a senior Commonwealth official described the length of time it had taken to negotiate the provision of data on school performance via a public website (despite party congruence between the states and Commonwealth), seeing this as an outcome of the states' inherent interest in protecting performance data from Commonwealth scrutiny:

I'm cynical about focusing on outcomes and just letting the states rip because they're not going to tell you unless you really, really, really force them. And if you really, really force them, you have to put it in the agreement from the start, and they don't like that, understandably. (Interview 41, Commonwealth line department)

The 'free rider' issue is a key trope in the partisanship approach to policy issues. For example, this official describes her jurisdiction's achievements in deriving efficiencies in education less as a potential resource for the system as a whole (as would the 'policy drivers' described below) than as another example of free riding:

We're operating up here a system that's operating on \$30 million or \$40 million less than it was four or five years ago per year. We have just had the best set of outcomes in the Northern Territory's history in terms of the number of year 12 graduates and average task scores. It's not rocket science. Some of these other jurisdictions will keep arguing that they need more and more and more. My own view about this is they haven't actually had to stand back and say, 'What are we going to take out?' They haven't had to do the hard yards. (Interview 29, Territory line department)

A Commonwealth official had a similar understanding of the drivers behind asbestos removal policy, basing this on the risks of cost shifting endemic to such a highly centralised system of fiscal federalism:

the minister didn't have concerns because the work that we were putting forward wasn't good; it was because it could be interpreted that the Commonwealth was going to step up and do more, which would then allow the states and territories to step back. That would mean they wouldn't have to manage the risk. The state governments would be very happy for the Commonwealth government to fund that problem and try and resolve it. (Interview 39, Commonwealth line agency)

The partisanship mode assumes that intergovernmental cooperation is driven by money; unlike the networking and policy-driving modes, officials who adopt this mode assume there are few other incentives for governments to work together, as summed up by this official's view of their state taking a policy lead:

if we had an agenda we wanted to lead, we'd probably just lead it for our state. What do we gain?

It's always interesting talking to other states: 'What are you doing?' But it's not like we need to join up with them on a lot of these issues. why we would take on an issue nationally ourselves is that it would have to be something that we get payoff for from involvement of the Commonwealth and other states. (Interview 8, state central department)

Consequently, a partisanship perspective tends to advocate the 'clean boundaries' approach of coordinate federalism, which informed the Abbott government's federal reform objective to 'ensure that, as far as possible, the States and Territories are sovereign in their own sphere' (Australian Government 2014, p. v). One official had an interesting metaphor for this approach:

the Commonwealth see themselves as the private school kids, and the States and Territories are public school kids. And they're not really going to play with us unless they have to. (Interview 3, State line agency)

Partisanship strategies aim to establish coalitions of interest, based on coalescent jurisdictional interests and the need to prevent the Commonwealth from making bilateral deals which will naturally disadvantage other states.

The craft of intergovernmental management in the partisanship mode is motivated by and embodied in strategies of benefit maximisation for one's jurisdiction or department. In describing how she ended up working in intergovernmental management for a decade, an official ascribed this to the fact that

This was my thing. It crystallised all the things that I really like to do, which was plot and plan how to get the maximum benefits from situations that I was in. (Interview 34, State line department)

Personal agency is mandated by the political executive's directions, and is expressed as 'playing hardball', such as advising ministers about how to take on the Commonwealth or the states as adversaries, or 'holding the line' (itself a militaristic metaphor) in terms of how tied and untied funding is allocated or performance reporting agreed.

We try to hold the line in the design of tied grants and in the maintenance of our untied grants the way they exist. We spend a lot of time trying to do that. (Interview 17, State central department)

The partisanship mode assumes that an official's role in finding or developing policy 'solutions', the lowest level of coordinative discourse Schmidt delineates, is about defending turf and building interest coalitions. One official described her role in negotiating a national partnership agreement on education using the metaphor of 'the line' again:

We ran a state and territory process where we basically got states and territories to agree a state and territory position. We held the line and held the line and held the line (Interview 15, State line

department)

Building networks is not described as a goal in itself, as the networking mode described below tends to do; rather, networks are primarily for gathering intelligence about the deployment of interests:

You've got to be vigilant in that Commonwealth-state relationship, really, really vigilant. You must go into it with your eyes open. You have to work on the relationships with the Australian government officials, so you have to know the people you're talking to and understand where they're coming from and what their imperatives are. You've got to put a bit of work into that. (Interview 29, Territories line department)

6.4.2 'The most important part of a COAG is the dinner': networking

The networking mode is the counter-practice to the partisan mode. Unlike the latter's emphasis on adversarial bargaining, this value set is focused on building relationships and trust. The networking mode aims to work around the conflicts that the partisan mode sees as intrinsic to intergovernmental management; networking tends to be dismissive of the hierarchies and formalities that, as I will show below, the agreement-making and processing modes welcome, or at least are prepared to adopt for their purposes. Unlike the other modes' adoption of negotiation and bargaining, formal agreements and formal systems and processes for issue resolution, networking aims to avoid issues arising in the first place or, once they have arisen, to find solutions in lateral relationships.¹²³

The networking mode tends to emphasise the collegiality that prevails across the bureaucracy, outside particular negotiation processes, rather than seeing the role of officials as simply to represent opposing sides in the federal process.

One state central agency official highlighted the networking mode's focus on people rather than structures:

Even if your structures aren't great, if you have the right players around the room and the right relationships and the right windows of political opportunity to do various things, if you have those ingredients - that actually is more important than whether you have the right structures in place. Structures only get you so far. (Interview 22, State central agency)

Consequently, rather than the partisan view that politics is intruding on the bureaucracy,

¹²³ In terms of coding frequencies, there was a clear distinction between officials I associated with the partisan mode and those who tended to display a networking mode. The former mentioned Commonwealth-state disagreements on 30 occasions, the latter only 3 across the entire range of interviews. However, while those focused on networking mentioned 'communications between jurisdictions' as the main problem they saw in Commonwealth-state relations, this was ranked as a comparatively minor problem by those working in the partisan mode (coded 8 times).

networking practice tries to reverse the process by pushing political executives into the same networked mode:

the first thing I did with my minister when we took over was to get him to get out and network nationally. So he met with [the Commonwealth minister] as the chair of the ministerial council. He met with the chair of Education Australia. He met with the chair of the early childhood group. He met with the chair of the curriculum council. (Interview 29, Territory line department)

The structures most conducive to networking tend to be epistemic communities, regular meetings of experts and the supporting frameworks for ministerial councils and working groups. These networks provide a source for the agency of participant officials and the locus of its exercise. Unlike the war stories that reflect the exercise of partisanship, agency in the networking mode focuses on relationships or network building, and how these were used to find ways to avoid disagreements, to just ‘pick up the phone’ to sort something out, or to facilitate policy projects and information gathering.

The priority of personal relationships for the networking mode is evidenced by the fact that its practitioners often have to overcome considerable opposition to the introduction of a network-building discourse to an organisation or policy area where it is not widely supported, requiring significant personal resilience and effort, as noted in section 4.3.3 above.

The relationship networking has with formal structures and processes is ambiguous. While networking, officials are conscious of the importance of the formal settings, but are also looking for ways through or around the formal structures to achieve their aims. For example, in setting up an asbestos policy working group where there were no existing national governance structures, one official began by developing a network, despite the lack of a formal role for the Commonwealth:

I spoke to the Commonwealth Department of Environment and asked them, ‘Geez, it would be so much easier if I had a senior officials meeting I could connect to.’ And they never said, ‘Well, you need to go to HEPA.’ It just didn’t occur to them. I went, ‘Okay, I’m going to work with a working group approach and I want to take forward the ideas that come out of your research,’ and they said, ‘Yeah, we agree.’ Basically I just used peer pressure to get people to participate. (Interview 39, Commonwealth line agency)

Even at the most senior levels of the intergovernmental bureaucracy, networking officials give priority to what is happening on the margins of formal COAG and council meetings as well as in the room itself.

The most important part of a COAG SOM or a COAG is the dinner. You can say anything. Hats are partially off; they’re never completely off. But if it’s a big meeting the next day, there might

be a more formal dinner in terms of, 'Okay, now where have we really got concerns and whatever?' It might be just a genuine convivial social get together with people who face similar problems in different jurisdictions. Or it can be when there's not much on the agenda, 'Look, let's just shoot the breeze and think about what's really going to be happening in this space.' (Interview 10, State central department)

Rather than the systemic outputs that mark progress for the processing or agreement-making modes, or the overarching outcomes that policy-driving aims for, the networking mode is focused on policy design and delivery as a specific network output. The policy goals to which networks supply the means involve what Howlett refers to as 'less abstract' objectives expected to achieve very high level outcomes (2009, p. 74); in other words, they are policy instruments directed to particular intermediate policy goals. For example, a state environmental regulator described the purpose of a nascent network on chemicals as the development of a national understanding of the risks:

what do we need to do to address the chemical risks, what do we need to know? How are we going to inform our ministers, do we need further regulation, so on and so on? (Interview 12, State line agency)

The purpose of networks, in this networking mode, is couched in terms of the early stages of the policy cycle, such as policy incubation, prioritisation, issues identification and information exchange, rather than higher level goals such as policy harmonisation. Networks for them are places where

the background work that needs to happen to be able to test those ideas and to know where you're likely to have the different perspectives coming from and being able to ensure that you are giving an appropriate amount of time to the range of different stakeholders to come to some resolution and what that might be. (Interview 28, Territory line department)

Networks are seen as opportunities to defuse or deflect potential conflict. As distinct from the partisan mode's focus on the end game of policy negotiations, networking uses networks as opportunities to reduce information asymmetry, to signal one's own jurisdiction's position and to receive intelligence about other jurisdictions' positions, working through them until consensus is potentially found, or at least there is enough of a joint understanding of the issue to take it back to formal negotiations. For example, HEPA emerged from the absence of a formal structure following the abolition of the ministerial council on the Environment, because a number of EPA heads felt they

HEPA can be the space where we actually say, 'Actually, there's no good or bad in any of this.' Lift your gaze; there might be local personalities et cetera. But you can lift it all up so we can agree around how we communicate these things, what's the language we use. Are we using or adopting US standards or European standards? They're very different. Why are they very

different? (Interview 14, State line agency)

Finally, the networks that form laterally between central and line department officials have an important effect on the dynamics of the relationships between central and line department officials discussed above. This networking practice contributes a great deal to the tendency, noted in the ‘traditional’ view of this divide, for central departments and line departments to form coalitions across jurisdictional lines:

we’re finding with Commonwealth Treasury, we’ve got a really good network functioning at the national partnership level. Through that we gain more and more of an understanding that the Commonwealth Treasury officials are sort of looking out for us and pushing back wherever they can. (Interview 25, Territory central department)

Other modes, however, push officials in different directions, another reason for my querying whether the traditional view of line/central alliances still holds (see the discussion at Chapter 4.5.1). The partisan mode, for example, is more likely to aim at the formation of central-line alliances within, rather than across, jurisdictions to shore up their bargaining positions and strategies.

6.4.3 ‘A whole new language’: agreement-making

This intergovernmental management practice is based on the formal intergovernmental agreements and their supporting processes. A key difference between this practice and the partisan mode lies in its downplaying of the importance of ‘sides’: what is important is ensuring that the principles and aspirations embodied in formal agreements are upheld.

As this official demonstrates, this practice mode is premised on the view that a clash of interests is endemic to the system, but the exercise of stewardship will help individual negotiations and agreements move towards meeting the framework’s aspirations:

The agreement-making mode is derived from a highly normative view of the separate intergovernmental space, expecting intergovernmental agreements to embody norms, as well as specific terms. Agreements set the directions and tone for the whole system, reflecting, in terms of the three levels of coordinative discourse, a higher level set of framework values which colours particular policy problems and solutions. This perspective distinguishes agreement-making from the other modes described in this chapter, which focus on more specific dynamics and trajectories of particular policy problems and solutions.

The IGA FFR has a preeminent status because of its aspirations and overarching guidance on drafting agreements generally. For example, a Commonwealth central department official

described herself as a ‘huge fan’ of the IGA FFR:

I think it's a really beautiful, well thought out, cohesive policy. It is not perfect. But it has survived for this many years when people thought it wouldn't, despite the changing political makeup of Commonwealth and state governments, despite the changing fiscal environment, despite different policy agendas (Interview 1, Commonwealth central department)

Consequently, the agreement-making mode focuses on defections from the spirit of the IGA FFR as a key problem with the federal system:

It's challenging to make progress on the disconnect between the policy framework that we ostensibly have in place and the practice of individual negotiations which frequently strays from that. At a portfolio level there can be quite reasonable reasons for state bureaucrats and state ministers to be really keen to strike individual agreements because they have portfolio objectives. In aggregate, what that means is we have a range of agreements that don't really look the way we foresaw at the time we drafted inside that overarching framework in the IGA. (Interview 17, State central department)¹²⁴

Of the five modes, this is the one most clearly shared between a self-defined group of officials, across organisations and jurisdictions, who are responsible for a discrete group of tasks in intergovernmental management; in this case, the central agencies responsible for agreement negotiations and maintenance.¹²⁵ Officials specialising in agreement-making tend to think of themselves as a guild, keepers of a distinct art that their colleagues rely on them to practise:

when I start talking about VFI and HFE and how does that fit in and how's the IGA on FFR fit with the new IGA they're developing on competition reform and what the sorts of things that we need to get, they kind of look at me blankly and go, 'All right, so do you think that's a good deal? Should we sign it?' And I'm like, 'Wow.' It's a whole new language and world. (Interview 5, State line department)

The intergovernmental management practices characterised in agreement-making emphasise systemic ‘guardianship’ and the provision of guidance to other organisations in the federal system. When these officials reflect on the impact they have had on the system, they tend to talk of their work as a mixture of art and science in the design of agreements, or ‘problem solving in a way that suits everybody’. Problem-solving as a way of contributing to the federal system motivates these officials, rather than reaching a specific policy outcome that is the focus of the policy drivers discussed below. Problems are solved deductively, using the overarching agreement framework to find a solution, rather than looking for it in the specific context as

¹²⁴ Note the echoes here of Warhurst's ‘iron rods’ discussed at Chapter 2.2.2 above.

¹²⁵ I note an interesting correspondence here with the concept of a socio-technological ‘regime’, a rule base embedded in institutions ‘providing orientation and co-ordination to the activities of relevant actor groups’ (Geels 2002, p. 1259). Pesch (2015) builds on this concept by exploring the nature of such regimes as discursive spaces and the role ‘regime actors’ play in managing conflicting meanings and tasks in those spaces.

policy drivers, processors and partisans tend to do.

Intergovernmental agreements provide a very clear mandate for their agency, and a process for its exercise. Protecting the agreement-making process is a paramount aim, even to the extent that this may require pushing back against the prevailing political direction, as one state official recalled in the context of the Prime Minister's Department taking over responsibility for Indigenous policy.

Being around in the agreement space for a long time, I know which sorts of things you actually have to really drive home. I can say, 'Look, I've never seen an agreement like this before. This smells to high heaven. Go away and think again about it.' So with that experience and that sort of track record, you can actually say those kinds of things. (Interview 34, State line department)

By comparison with officials working in the other practice modes who describe their impact in terms of a specific policy process, when officials talk about their role in agreement-making they focus on delivering systemic improvements. For example, an official from a small jurisdiction took the initiative in attempting to change the cumbersome method of reviewing agreements:

We've been saying every year for five years, 'Please renew this agreement because of these reasons.' So we decided, 'Let's change this and really highlight what the issue is here: that we're operating in a policy vacuum and we have been for some years now and we need some sort of direction and we need serious consideration for more permanent arrangements for these sectors.' (Interview 25, Territory central department)

The normative aspects of agreement-making inflect their understanding of how the relationships between central and line departments work. As noted at Chapter 4.5.2, central agency officials consider it an important part of their role to collaborate with one another across the Commonwealth-states divide to persuade or negotiate with their own jurisdiction's line department officials to get them over the line to an agreement. Part of the problem lies in the line departments' relative unfamiliarity with the agreements framework and what it is trying to achieve. As a result,

They're engineers, or scientists that work in the middle of nowhere. They don't understand what the difference between an outcome and an output is. So somebody will draft an agreement and it will have a lot of these problems, they don't follow the template, they mix up outcomes and outputs, they include input controls - which we can't have. (Interview 1, Commonwealth central department)

The solution lies in cross-jurisdictional liaison between central agency officials. Consequently, central department officials spend a lot of time in meetings and teleconferences talking through issues and explaining how the framework works (one central agency official was renowned

across jurisdictions for carrying a copy of the IGA FFR in her handbag). They will often meet at the outset of an agreement process to explain the steps involved and to ensure they get to see draft agreements. However, they often complain that, although they are supposed to be the ‘gatekeepers’, as one official described it, many agreements come to them for checking too late in the process.

6.4.4 ‘Anyone else could step into this role and perform it similarly’: processing

The processing practice mode focuses on means, rather than ends, in distinction to the ‘policy-driving’ mode I will discuss next. The processing mode is based on the premise that good processes allow outcomes, which are vague and unpredictable, to look after themselves. Similarly, as distinct from the networking mode, the processing mode prioritises good processes over good relationships.

As the quote in the section title suggests, highlighting process downplays the role of personal agency. The processing mode focuses on the efficiency and integrity of processes, rather than the attainment of outcomes. For example, an official described applying his expert knowledge to ensuring that meetings were efficiently run:

In chairing, in directing the meetings, in driving some consensus, doing the pre-work to make sure that as much as possible agreement had been arrived at before the meetings took place, making sure that my minister was well briefed about other issues that jurisdictions may have had nationally. (Interview 29, Territory line department)

Similarly, another official talked about an episode he felt exemplified his personal impact by recalling an orderly sequence of policy development (rather than pointing to its outcome):

I had come up with a few ideas on how (health funding) could be distributed. It had been well tested. I then identified a variant to the options that had been tried. I rang around all jurisdictions and said, ‘Off the record, what are your thoughts on this one?’ But I did talk to the Deputy Secretary beforehand saying that I was going to have the conversations. (Interview 9, State central department)¹²⁶

The processing mode is often described in terms of the similarities between such work and other standard forms of executive governance, comparing getting a good outcome at COAG to getting a good outcome at cabinet meetings. Managers personally intervene to fix problems, to test positions beforehand, to ensure there are no surprises for the political leaders. By

¹²⁶ The caveat at the end of this quote points to the characteristic muted role for personal agency this mode exhibits, which I will discuss shortly.

contrast with the partisan and agreement-making modes that pay close attention to the individual nuances of a specific meeting and its outputs, processing typically downplays the importance of the individual characteristics of such processes, emphasising adherence to the rules-in-use:

Ministerial meetings themselves are rituals. Everyone knows what's going to happen and everyone knows what their position has been. That's all been negotiated beforehand. I've done a good job if I have taken steps to ensure that there are no surprises for either my secretary or my minister, and I've taken steps to either negotiate to a consensus or to have gathered the intel (Interview 15, State line department)

As with the networking mode, but for different reasons, the processing mode tries to avoid the partisan nature of intergovernmental bargaining, preferring to work on incremental collaboration in policy development. One official saw these differing practices and roles as requiring different rules:

the other side, the intergovernmental agreement, was much more conflictual and done by economics people and the more treasury-type people. We spent a fair bit of time trying to build a culture where we had a trusted relationship with [the states] on the design. We ran them quite separately, so it was really clear that there were different conversations happening and that the rules were different. (Interview 26, Commonwealth line department)

In terms of the problems that arise in intergovernmental management, agreement-making is concerned about defections from the spirit of the agreements framework, the partisan mode about a clash of interests and networking about difficulties in building and maintaining relationships. The processing mode is focused on fixing poor processes. Consequently, the patient backroom slog of data gathering and evidence building is seen as the context for incremental change to the relevant processes. For example, an official noted that her minister had been very keen to secure funding for early childhood services in the context of a national partnership agreement. However, she sought a mandate to 'do better' on what her department thought was a 'bad deal', through the development of a state consensus

a lot of detailed work, understanding what the issues are and then what the options were to achieve an agreed approach. There were like A3 tables with lots of text on them. We were in [the Department of Premier and Cabinet] and we worked with our line agency to develop up those options and then we shopped it around to jurisdictions individually and then together. (Interview 15, State line department)

The processing mode views fiscal federalism through the same lens, prioritising the systemic impact of poor processes for which both sides are held responsible:

The thing which is most frustrating and most difficult to deal with is when a government - and it can be either the Commonwealth or it can be a state or territory government - makes an

announcement contingent on funding being provided by the other level of government, where they set out the quantum of funding and exactly what the project's going to be for, and do that without any consultation with the other party. Both levels of government are guilty of doing that. (Interview 2, Commonwealth central department)

As I have noted, giving pre-eminence to process tends to downplay the role of personal agency. Together with agreement-making and partisan modes, the processing mode sees the source of individual agency in external authority and mandate rather than personal autonomy (as the policy-driving mode does). The following comment from a senior Commonwealth official was typical of this view:

I've never seen the role I perform as having a personal level of input. I know that sounds a bit deflating in a way, but I've never seen that as a professional part of the role. Anyone else could step into this role and, if they're competent, they should perform it similarly. At the end of the day, if you're operating on the basis of evidence-based policy and just addressing things on their merits, things tend to play out in a similar sort of way regardless of who's in the role. (Interview 27, Commonwealth line department)

Similarly, a senior official involved in negotiations with the Commonwealth over water legislation described their role — 'one of the ones I'm proudest of from a state perspective' — in hierarchical terms:

I was taking matters to [state government] cabinet and getting for negotiating positions that we were taking. Q. Where did you get that degree of autonomy? Was that by virtue of your level of seniority? A. It was more authority than autonomy. I was the lead New South Wales representative on the relevant intergovernmental committee. So it was delegated to me to lead it. (Interview 23, State line agency)

The importance the processing mode ascribes to the legitimization of work through structures and processes comes through very clearly when officials are thinking about the formal structures of the federation. Rather than viewing formal structures and processes as a frustrating, bureaucratic brake, as is the case for the policy-driving mode described in the next section, the processing mode considers structures as particularly conducive to its application.

It's about decisions. There's always a communique, and when you get a bunch of ministers together, they want to be seen to be effective at making decisions. So the whole bureaucratic machine that sits beneath that aligns itself to make sure that things happen. The momentum that the ministers meeting creates drives action within the various jurisdictions. So it's just that gravitational pull. (Interview 14, State line agency)

In terms of the dynamics between central and line departments, it should not be assumed that the processing mode is more prevalent in line agencies. As **Table 4** indicates, the adoption of the processing mode was almost evenly distributed between central and line departments.

The emphasis on processing does, however, affect the perceptions officials have for one another across this divide. Central department officials often complain that their line department colleagues don't understand the importance of good process:

At one stage we did some work on overlapping duplication between the Commonwealth and the states. The interesting thing I found was in the line agencies, they didn't really see there was overlap and duplication and unnecessary paperwork and all that sort of stuff. The comments were, 'Well, we have to put this all together to get the money.' (Interview 35, State central department).

Conversely, many line department officials felt they were the guardians of good process in their particular policy field:

If you're good at policy, you're good at policy; so you can just go anywhere, whereas a lot of people think that regulation is the act of making regulations, whereas the rest of us see it as the act of executing regulations. What it boils down to I think, particularly at the Commonwealth level, is there's a lot of talk. There's not a lot of enforcement being the focus. (Interview 13, State line agency)

6.4.5 'I'm going to Canberra to talk to them': policy-driving

The management practices and the personal agency policy-driving brings to the fore are about breaking through the constraints imposed by resources, frameworks and organisational boundaries. There is an impatience here with the procedures and formalities that processing and agreement-making considers vital to a successful outcome.¹²⁷ The adoption of the policy-driving practice mode is not just about boundary spanning, it is about boundary smashing, removing or avoiding obstacles which, in the processing mode, might be regarded as helpful if not critical structural devices.

The other practice modes ascribe a significance to exogenous factors in determining and legitimising strategies, in the form of an intrinsic clash of interests in the federal system, or the primacy of networks, agreements and processes. Policy-driving, while cognisant of these factors, is more focused on how to overcome them, making one's personal agency paramount.

Thus, the policy-driving mode stood out by the number of times interviewees recalled and described instances of definitive and abrupt shifts in direction, particularly where they brought this about in opposition to the prevailing structural constraints. For example, a state government official recalled a SOM where they persuaded their colleagues to take a very different, outcomes-focused approach (exactly the level of discussion the regulator quoted in

¹²⁷ I coded only three mentions of a problematic process by interviewees focused on the policy-driving mode, compared to 27 such references by interviewees who focused on processing.

the previous section would call ‘a lot of talk’):

We were getting to, ‘What’s next? Shall we have a session on health? We’ll get someone to draft a paper on health.’ I said, ‘No, let’s not do that. I wish you wouldn’t do that. Why don’t we get someone to give us a presentation on the issues of health and we can discuss it?’ In previous Commonwealth-state negotiations then there would probably have been a huge discussion about ‘Well, who should give the presentation? If it’s from a state will that skew it?’ (Interview 10, State central department)

He liaises with the head of the Department of the Prime Minister and Cabinet to get the head of the Commonwealth’s Health Department to lead the discussion, and succeeds in introducing a significant shift in the way this group worked:

He just mapped out the issue and we had a fantastic discussion on health. We collectively all got a better appreciation of the issues and it was good. That then set the tone. At the next meeting with education we had [the Secretary of the Education Department] come in. We did housing policy and we had [Housing] do it. We just had really good conversations. (Interview 10, State central department)

Policy drivers are noticeably impatient with hierarchies and formalities. In wanting to get the Commonwealth Department of the Environment ‘to pull up its regulatory socks’ in relation to the contamination of Department of Defence sites by firefighting chemicals, a state environmental agency head jumped several organisational boundaries and levels to go direct to where she felt she had best chance of getting her hands on the policy levers:

I’m actually going to fly up and talk to my colleagues in the Commonwealth. I’m not a hierarchical person. I could go to the secretary but I won’t get the outcome I want. I want change. The person who I actually know who owns the issue is the Dep Sec. So I’m going to go and talk to the Dep Sec. And it won’t be on record; we’re going to have a conversation here about whether we can do this differently. (Interview 12, State line agency)

On a different policy issue, she went even higher:

I want the department to consider moving into a better air policy space. They’re a bit cross with me because I spoke to the minister about it and the minister’s excited. They keep saying, ‘We’ve got no resources to do this.’ I’m saying, ‘I’m not asking for resources.’ (Interview 12, State line agency)

Policy-driving also differs from the partisan mode in its determination to rise above the latter’s political and adversarial concerns. There is an important distinction to be made between the partisan mode’s *opportunism*, on the one hand, and the opportunities policy-driving may leverage. The term ‘opportunistic federalism’ draws attention to actors who pursue their interests, or perhaps more frequently those of their political or organisational executives, without regard for their systemic, collective consequences (for example, see Conlan 2006,

p. 667). Policy-driving, to the contrary, prioritises these outcomes in balance with, if not in preference to, particular interests. That balance is predicated on a combination of calculation, or preparation, and finding the appropriate window or opportunity.

In an excellent summary of policy-driving practice, a front line manager in women's services argued that she could easily have become discouraged by the time it took to bring the early consultations on domestic violence in 1986 to fruition in the form of the Women's Safety Agenda in 2005. However, she reflected,

You go for what the long game. You try to build your influence and take your opportunities. I always describe that agenda—you've got to have at least five to 10 things in your back pocket in case you're asked [by the Minister] "I'm speaking at a function. What do we need to fund? What do I need to announce?" We've got to have that leverage and opportunity that we can utilise. (Interview 31, State line agency)¹²⁸

There was a clear tendency for department and agency heads to display a policy-driving practice more often than those below them in the hierarchy, so one proposition that comes from this data is that senior managers are more likely to derive their motivation from systemic and more widely and structurally embedded frameworks, whereas those lower down the organisation are more likely to act in pursuit of specific policy goals.

A hallmark of this practice is its appeal to the national interest, rather than narrower jurisdictional and organisational goals.

We could do this Commonwealth-state stuff very differently if it wasn't all about scrambling for the money. It could be very much around just strategic directions, strategic thinking, strategic conversations. As a federation, what have we got to offer each other when you come together and talk about the problems that we all face? It's kind of that thing that interests me as much as, 'We haven't got any money; so why would you bother turning up?' (Interview 8, State central department)¹²⁹

This preference for the systemic rather than localised view is not confined to central department personnel. It is also adopted by officials in policy departments and at the front end of regulatory and service delivery. Thus, a state official was critical of the Commonwealth Health department because it was focused on getting to another national agreement on health funding

¹²⁸ There is also an interesting difference between policy-driving as a practice mode and the 'opportunists' Mahoney and Thelen identify as a type of incremental change agent. They argue the latter are unlikely to try to change an organisation's rules because of the costs involved, and prefer exploiting existing possibilities over 'riskier' strategies of mobilising for change (2010, p. 27), which I have suggested is a hallmark of the policy-driving mode.

¹²⁹ The discourse she is critical of is, in fact, one that partisans frequently adopt; they use precisely this logic to argue, as one official did, that 'There's a bit of money in the energy and the renewable space. So you play with them, otherwise why would you play?' (Interview 33, State line agency)

(whereas, of course, the agreement-makers would see this as the goal, while the partisans would never begin with the following:

This is a bit dull, because it's just about money. We're just trying to get another agreement, whereas I'm much more interested in getting that out of the way so we can actually have a proper discussion around health reform and start as soon as possible so we've got, like, most of the term of government of the Commonwealth to really see if we can do anything in that space. I'm very interested in that. (Interview 8, State central department)

At the regulatory end of the policy continuum, an environment agency manager saw HEPA's value in these national, systemic terms, rather than the interests of a particular state:

There are things which are Victorian interest issues. I know that for New South Wales EPA there are issues around [firefighting foams]. Rather than having a positional jurisdictional spat over it, I've used the voice of HEPA to say, 'Why don't we get HEPA to take this on as a collective issue?' Rather than fighting for our own interests, what is the national interest? What is the multijurisdictional interest? What is the framework that's needed to help us give confidence to the community around what we should be doing? (Interview 14, State central agency)

A key problem in the federal system that the policy-driving mode tries to break down is the routine primacy of process over the 'strategic' issues, the very opposite of the disdain for 'navel-gazing' expressed by those in a processing mode. Similarly, a policy-driving role is construed, at times, in terms of pushing back against the interests that guide the partisan mode:

I think I've played some role in reaching agreement across all the states and Commonwealth to have the same scientific process to do the threatened species listing. I pushed that very hard. There's always a lot of resistance in systems, especially when you've got to say, 'Let's do something across the federation.' Others will say, 'Well, what's in it for me? Why should I bother?' And I overcome that by persuasion and saying, 'This is good for the environment.' (Interview 30, Commonwealth line department)

As I noted in the earlier sections, processing downplays the role of personal agency, just as agreement-making and the partisan mode locate the sources of change in the external structures and processes. However, the opposite is the case for policy-driving, which is all about an official's personal role. On a normative level, policy-driving seeks the autonomy that processing is only prepared to accept with far more guidance and mandate. In commenting on the federal system as a whole, for example, a senior state official sought fewer constraints over outputs:

I think there's scope for more autonomy or authority to be passed on to officials to progress things than there is. What I tend to observe through the committees and even to COAG is that there's an awful lot of updates that come to these committees with very detailed implementation plans and updates as opposed to a moderately detailed road map and then going away and working that up. COAG should agree the broad direction and commitment to when things are going to be done, with that then being passed down to the ministerial council and then further down to officials to

get things done. (Interview 9, State central department)

This emphasis on ‘the big picture’ translates into how policy-driving interprets its job description, with a view that it involves ‘making waves’ and a concomitant impatience with incremental change:

I could be a very good bureaucrat and write some very good reports and release them publicly and never bother the minister and all that sort of stuff and they’ll go, ‘Oh, you’re doing a good job,’ but I would never make any waves and nothing would happen. We wouldn’t achieve any significant change. It would be very, very incremental (Interview 39, Commonwealth line agency)

Personal agency is therefore played out in a way that emphasises personal autonomy and impact; those officials who adopted a policy-driving mode like to tell stories about how they swam ‘beyond the flags’ or at least managed to have them set wide apart:

All of the way leading up to that COAG meeting I had no authority for the negotiations or the discussions that we were having. So I had to be absolutely upfront that it was completely without prejudice and I had no authority, but that it is the way I played it. (Interview 21, Commonwealth line department)

Each of the modes I have described enacts the separate bureaucratic space described in Chapter 5.6 differently. Policy-driving does so by using it to support systemic goals through building policy coalitions outside and around the political and jurisdictional interests that galvanise partisan alliances. In the area of social policy, for example, line department officials were collaborating on policy development without a mandate from the political executive:

Victoria had come up with a view around how we might reform Commonwealth-state relations. So they had worked pretty closely with us behind the scenes. I wasn’t telling ministers or treasurers about this; this was just sort of happening, cooperating and working together. They wanted to send papers to us. We’d comment on them, we’d criticise them, critique them, agree with them, whatever. (Retired senior official, Interview 4)

Policy-driving adopts a number of techniques to push the bigger agenda in preference to incremental change. As in the preceding quote, one approach is to ‘go for the long game’ as one official put it, building personal influence and seizing opportunities to advance their agendas as they arose.

One way in which they might do this is through the use of data to advance an issue outside traditional boundaries and processes. Policy-driving values the knowledge that emerges from data and information processes and flows; many officials commented on the importance of data and information in helping them frame or structure problems and issues. For example, a Commonwealth official, noting that the Commonwealth did not have a direct role in

implementing asbestos removal, ‘and we are not a department so we do not have a policy-setting role’ nevertheless used data gathering as the basis for an evidence base:

Then I wrote to all the EPAs and said, ‘I would like to convene a working group so that we can bring this to the attention of the jurisdictions. Because I had a report with very good recommendations, they agreed to work through every issue. So now we have a process which is going to make what we call socially optimal models of some of these policies that can be implemented when those opportunities arise (Interview 39, Commonwealth line agency)¹³⁰

Another common approach is to shift particular processes and procedures outside their standard formats, to enable a clearer focus on higher policy outcomes. In developing policy on national on-line education tests, one official recalled:

I’m watching the room going, ‘We’re not going anywhere particularly clearly and quickly.’ So I just closed the meeting and went, ‘We need to have a conversation without an audience, because ultimately we are the accountable officers. If this goes pear shaped it won’t be a minister that cops it; it will be our kids, our communities and our staff and ultimately us. What’s going on here, guys, and how do we get through this?’ Because we didn’t have everybody else and we didn’t have the other parties in the room we could have that conversation. (Interview 28, Territory line department)

In the following example relating to competition policy, the approach consciously lifts the process of policy analysis away from its settings in a negotiation process; an approach that clearly differs from the way data is dealt with in the partisan and agreement-making modes:

We went into that project very prepared to see, come what may, where the evidence takes us. We treated it as not connected to a set piece of the negotiations. So we didn’t say, ‘This is to prepare us for the negotiation on the IGA.’ We said, ‘Look, this is completely separate. This is an unrelated piece of policy work that we think is really important.’ (Interview 22, Territory central department)

6.5 Practice modes and intergovernmental management

6.5.1 The distribution of practice modes in intergovernmental management

A simple frequency count of the number of times the interview transcripts were coded against a particular ‘practice mode’ is provided in **Table 3**. Processing is the most frequently encountered practice mode, perhaps unsurprisingly for a group of bureaucrats. Partisanship and networking came an equal second, followed by policy-driving and finally agreement-making, again unsurprisingly as the latter tends to be a role that is concentrated in central departments. Overall, however, little can be read into this distribution of practice modes within jurisdictions, as the coding frequencies could simply be a random product of the small number

¹³⁰ The immediate marker that differentiates this text from the processing mode is this official’s indication that there was no direct Commonwealth interest or power in this area, but he goes ahead anyway.

of interviews and their distribution.

Table 3: Coding frequency by jurisdiction and practice mode

	Partisanship	Agreement-making	Processing	Networking	Policy-driving
Commonwealth	31	22	39	26	26
NSW	17	5	25	9	36
Vic	28	14	41	23	16
SA	19	4	13	27	7
Territory	10	11	20	18	7
Total times coded	105	56	138	103	92

These findings do, however, suggest the interesting possibility that certain practice modes may predominate in particular policy sectors or particular jurisdictions. In the latter case, for example, particularly strong leaders have introduced and signalled a shift in the jurisdictional culture that has then been reflected in the views of his or her subordinates and sanctioned changes to their practice.

As an example of the relationship between practice mode and policy sector, it may be that particular practice modes appear to be more prevalent in some types of policy area than others because of the nature of the tasks involved. Thus, there was a preponderance of references to networking and processing amongst officials working on environmental policy and regulation; very few interviewees in this policy field displayed a partisan practice mode, and there was close to a complete absence of references to agreement-making.

Again, I attribute this to the likelihood that agreement-making tends to be a central agency activity, whereas regulation tends to be a line department/agency responsibility. However, this does point to the potential for further analysis of practice modes by policy sectors.¹³¹

¹³¹ This point echoes Inwood et al.'s analysis of intergovernmental relations in Canada; their research explores 'one of the interesting dynamics discussed in contemporary policy and public administration literature', viz 'the

The preponderance of agreement-making by central agency officials is clear in **Table 4**, which allocates the frequency of coding for practice mode by the type of organisation interviewees work for. In comparison, far fewer central department officials discussed networking, which together with policy-driving ranked a clear second behind the other practice modes for those working in central departments. Processing – again, not surprisingly – and networking were the modal frequency for those in line departments.

Table 4: Coding frequency by organisation type and practice mode

	Partisanship	Agreement-making	Processing	Networking	Policy-driving
Central	43	45	43	20	29
Line	62	11	95	83	63

6.5.2 Practice modes and personal agency

Turning to a general overview of how the ideas and practice modes outlined in the preceding sections contribute to the research question, each practice mode has a characteristic approach to change, in terms of its objectives, how it is legitimised and effected and how it is related to the formal structures and processes officials work with.¹³²

As **Table 5** indicates, the number of times personal agency and impact were mentioned in connection with a particular practice mode varies considerably. Officials who tend to describe their work in terms of networking and policy-driving are notable for their belief in, and activation of, opportunities in the system for the exercise of their personal agency, while those who describe their work from a partisan and agreement-making perspective mention their personal roles in change the least.

dynamic between ideas and institutions and actors, where policy "arenas" provide a forum for the shaping of all three' (2011, p. 13). Thus, for example, they discuss the influence of free market monetarism on 'the ideational frame of the work of finance officials - perhaps the single most influential cohort of officials in the contemporary public service' (p. 133); the priority of economic reforms arising from New Public Management over environmental protection (p. 180); ideas of globalization, continentalism, and free trade on officials working on trade policy (p. 304) and so on.

¹³² In effect, this exemplifies the critical realist argument against conflating structures and individual agency by showing how actors use existing structures to change institutions (Leca & Naccache 2006).

Table 5: Coding frequency of personal agency and impact by practice mode

	Examples given of active personal agency	Examples given of personal impact
Partisanship	4	6
Agreement-making	7	8
Processing	14	24
Networking	29	27
Policy-driving	18	24

The reasons for this variance may partially relate to the way practice modes interact with formal structures, processes and contexts. Thus, for example, the partisan and agreement-making modes are also the ones most strongly associated with the formal structures and operations of federalism such as agreements and ministerial councils. Conversely, the networking and policy-driving modes take place in contexts where the adoption of such approaches is less risky and is a legitimate, acceptable role to aspire to.

The partisan mode works on change in the context of the ministerial councils and their processes. Frequently, change is understood or designed as a response to an exogenous change rather than something officials introduce themselves. A particular example that a number of officials commented on was the introduction by the Rudd government of seven working groups in major policy areas that were chaired by the relevant Commonwealth ministers, with state government ministers as their deputies, and supported by a mix of Commonwealth and state officials. These new arrangements did not follow standard operating procedures, and consequently were regarded as ‘really strange beasts’ one official recalled:

The officials were really freaked out. It actually worked quite well for a couple of them, and a couple of them didn’t work so well. A lot of work was done between the formal working group meetings by officials. But they sort of worked surprisingly well in a couple of instances.
(Interview 21, Commonwealth line department)

Despite its apparent source in the fault-lines of the federation, the partisan practice mode actually tends to bolster the federation’s institutional stability. By focusing on the development

of, or shoring up, intra-jurisdictional alliances between central and line departments, and inter-jurisdictional alliances across the states, partisanship generates and reinforces patterns of expected behaviour that simplify and increase the predictability of outcomes from any given strategy. Similarly, by reducing uncertainty about how processes work or what they will deliver, partisanship increases the efficiency of those processes, albeit at the expense of their potential outcomes.

Processing is notable for the way this practice often changes the way working groups function in order to secure better outputs from them. Officials frequently described how they had applied this mode in terms of the way they chaired such groups, particularly through establishing, clarifying and changing standard operating procedures. For example, an official chairing an education policy working group described ‘walking into a meeting where I actually don’t know the directors-general and secretaries’, and, on finding it bogged down

said to a whole lot of the jurisdictions, including the bigger ones, ‘No, you’re not having a cast of a thousand. Sorry, you can have two and you, because this has to be a genuine conversation. We have to problem to solve. (Interview 28, Territory line department)

Whereas policy driving may be prepared to risk good process in the service of major policy changes and outcomes, the processing mode is about managing the risks of such change in the service of ensuring the integrity of the system is maintained and public sector values, such as accountability and due process are adhered to. Accordingly, the processing mode tends to impact on federal dynamics by contributing to systemic stability and resilience, along with partisanship and agreement-making. The following is a typical expression of where processing lands on the balance between systemic change and preservation:

A senior Commonwealth official said to me, ‘We’ve just promised this to the states,’ and I looked at her and I just put my head on the desk. I was not trying to make a dramatic gesture; it was a physical reaction. I thought, ‘Oh, my God, what have you done? Do you know what you’re doing? You’re spending bloody billions of dollars of taxpayers’ money without prudent assessment of the risk’. It caused me tremendous anxiety and stress—tremendous. (Interview 42, Commonwealth central department)

Unlike the partisan mode, the exercise of agency and the aim of innovation in agreement-making is about finding ways to maintain systemic stability and to overcome the problems of vertical fiscal imbalance and centralisation. Consequently, as a practice mode with the most developed normative perspective, agreement-making has a major effect on federal dynamics by its contribution to systemic coherence and resilience.

The agreement-making mode is most often embodied in the work officials undertake to change the overall process for making agreements; for example, officials may see opportunities for greater efficiency in the process, or they may see instances of agreement-making that depart from their strongly-held normative view of how agreement making should work, particularly as it is embodied by the IGA FFR.

The partisan, agreement-making and processing modes tend to introduce change as a way of stabilising and improving existing processes and structures, in line with Jabko and Sheingate's view of agency in defence of the *status quo*:

we wish to draw attention to the creative, order-sustaining action by defenders of the status quo. Furthermore, we suggest these order-preserving innovations are themselves an important source of institutional dynamism that standard approaches often miss. (Jabko & Sheingate 2018, p. 313)

In contrast, change carried out through the networking and policy-driving modes tends to work in opposition to established structures, and the latter mode in particular is characterised by attempts to circumvent hierarchies and processes.

The ambiguous relationship between networking practice and federal structures noted earlier produces two systemic impacts. Networking makes a major contribution to systemic stability and resilience, by ensuring that personal relationships endure and function outside and despite the politicised environment and the pursuit of interests that entails. However, the 'safe spaces' networks provide can also be incubators of innovation and experimentation, and consequently this practice mode makes an important contribution to processes of change in the federation.

Finally, in common with networking, policy driving tends to affect federal dynamics in terms of its contribution to change and innovation, rather than stability.

6.5.3 Practice modes and coordinative discourse

In forming their ideas and developing their practice, managers reach 'up' for a guiding set of values from the higher level narratives around the nature of the federal system, and apply them 'down' to a particular policy canvas in the particular ways in which they tend to work. In observing this effect, I am linking Schmidt's three levels of coordinative discourse, and how ideas, norms and values 'travel' up and down this hierarchy, with Benz and Broschek's ideational and structural layers and how they interact.

Officials use the values and ideas contained in broader paradigms about the federal system to position themselves and their work, in terms of how they describe their personal goals and

strategies in the practice of intergovernmental management; the issues which they identify as being most important to them in that work; how they understand the salient problems in intergovernmental management they are dealing with; how they select and operationalise the solutions available to them; and, finally, how they operate as change agents.

This does not contradict Hollander and Patapan's depiction of Australian federalism as 'pragmatic' (cf Chapter 2.2.2 above). As they argue, 'this does not mean it is a federalism without ideas. Rather, it is a federalism largely uninformed by imposing aspirations and grand political or legal theory, or shaped by party ideology and platform' (2007, p. 285). Consequently, as officials draw on the higher level value sets and narratives to guide and legitimate their practice, they do so in ways that are contextually relevant and vary according to the circumstances, rather than adopting *a priori* stances to which they adhere regardless.

In order to understand the connection between the higher ideational or discursive levels of federalism and the specific policy issues to which they are applied, it seems useful to characterise the bureaucratic space in which that happens as discursively 'ordered' or 'structured'. A discourse is said to be structured 'if the credibility of individual actors in a given domain requires them to draw on the ideas, concepts and categories of a given discourse' (Hajer, 1995, pp. 60–61) and consequently their resulting practice 'makes sense' to their colleagues and stakeholders. Thus, for example, agreement-making is based on working with colleagues on getting them to understand the aims and purposes that lie behind particular agreement processes, even where this may run counter to the approach their own jurisdiction has adopted (an example of the distinction between 'trusteeship' and 'serial loyalty'):

they need to understand the federal financial relations framework. They need to understand what the difference between an outcome and an output is - a lot of people don't understand that and mix them up. So somebody will draft an agreement and it will have a lot of these problems, they include input controls - which we can't have. (Interview 1, Commonwealth central department)

Policy driving and networking, on the other hand, derive legitimacy and sanction from 'big picture' outcomes in policy terms, or from collaboration as a goal in itself, building relationships to use when necessary:

I've seen the public servants play out the politics at the Canberra level. I'm not interested in that. I'm interested in resolving some of the big issues. We've now set up this group of environment regulators across Australia and New Zealand to work on these big problems. If we can get the federal department to play with us in the same way, we actually have a chance of giving our ministers a very real action to actually change things. In my view, the barriers to stop that are about behaviours. We as public servants have the luxury of taking a longer-term agenda.

(Interview 12, State line agency)

The ideas that generate and inform practice modes also affect federal dynamics through the role of multiple discourses as a structuring framework. This point effectively returns to March and Olsen's fundamental recognition that 'the fact that most behavior is driven by routines does not, by itself, make most behavior routine. The number and variety of alternative rules assure that one of the primary factors affecting behavior is the process by which some of those rules, rather than others, are evoked in a particular situation' (1989b, p. 24). The task, therefore, is to uncover how and why they do so in the federal context, and the implications for bureaucratic practice.¹³³

Discourses multiply over time as well as by policy sector or jurisdiction. Most, if not all officials who had any longevity in their role noted how differing signals from the Commonwealth had a critical effect on systemic priorities, particularly as, at the time of the interviews, the Turnbull government had abolished the Abbott federalism review but not replaced it with any strong directions for COAG. As a result, one official suggested,

first ministers' departments around the country are inherently a bit less interested in that space and are focusing on other priorities (Interview 24, State line department)

Other officials described a mix of sectoral and temporal dimensions to the content of their ideas about the federal system. In relation to human capital, for example, officials compared a recent COAG meeting which was 'all about who pays'.

If you went back 10 years it was a conversation about the fiscal gap but it was where we put our investment. In that fiscal environment you could talk about new investments. This year it's been about talking about savings and who bears the burden of the fiscal gap. (Interview 17, State line department)

Similarly, officials described the shift from collaborative to adversarial relations in working on schools and disability policies:

it has gone back much more to a genuine battle of Commonwealth versus state than it probably was five or six years ago, because of how Canberra is using the COAG space and the intergovernmental discussions. I think probably post-Gonski and NDIS a lot of goodwill has been worn away: it's a Commonwealth takeover and a very Commonwealth-driven approach to a welfare entitlement as opposed to an insurance model. (Interview 19, State central department)

¹³³ The following discussion supports the critique by Selsky et al. who argue discursive approaches have failed to explain how different discourses interact within a domain; accordingly, they argue for a more complex and dynamic framework in which actors 'use multiple discourses in making sense of, negotiating and ordering the domain' (2003, p. 1731).

The notion of multiple discourses within the bureaucratic domain also illustrates how officials respond to the conflicts that arise between values and ideas contained in these contending discourses. For example, officials base their practice on ideas that are derived from all three of the domains I explored in Chapter 2: that is, from the federal system, from their role as public servants more generally with the associated ideas about public administration, and, finally, from the ideas that characterise particular policy areas and their histories. Ideas and values prevalent in one may conflict with those that dominate in another of these domains; for example, many officials described a tension between delivering the best outcomes for their current political executives, derived from their role as public servants generally, and their view that the national interest would be served by achieving collaboration (again, highlighting the trusteeship and serial loyalty described previously).

Different discourses played out between the states in their response to the development of the National Disability Insurance Scheme.

Throughout that debate we [Victorians] were very much about the outcomes for patients whereas New South Wales was about getting a deal because they knew how important it was to the Commonwealth about getting a deal. (Interview 19, State central department)

The clash of discourses often lies behind the different interests and strategies adopted by central and line departments. As one official put it, the former

are interested in the big principles and the big settings - how much funding, policy autonomy, how much reporting, what does this say about state sovereignty, does this contribute to national reform agenda, how are federal-state relations going in general and what's this saying about where we going? Line agencies actually have to get a whole bunch of business done. Part of that is ensuring you've got funding. They're talking in the realm of principles, we actually deliver services and actual stuff happening on the ground. (Interview 15, State line department)

Managing conflicting discourses is an important element of effective intergovernmental management; indeed, as Sheingate notes, such institutional complexity provides opportunities and resources for actors' creativity (2003, p. 186). Managing this ideational complexity may be done by allocating structures and processes that allow each discourse a bureaucratic space in which the associated practice mode operates, as occurred, for example, in the development of the National Disability Insurance Scheme:

We spent a fair bit of time trying to build a culture where we had a trusted relationship with the states on the design. We were pretty clear, too, that the other side, the intergovernmental agreement, was much more conflictual and done by economics people and the treasury types. We ran them quite separately, so it was really clear that there were different conversations happening and that the rules were different. (Interview 26, Commonwealth line department)

However, it was also clear that change strategies fail where there is insufficient leadership and oversight to ensure that the alternative cultures are legitimised and supported. The new working group arrangements introduced under the Rudd government did not last, and one reason for this, according to a senior state official, was the lack of cultural change throughout the home organisations for those officials involved.

This new approach had to be implemented both culturally as well as practically. One reason why it all went to hell in a hand basket was because when it went out to the line ministers, be they Commonwealth or state, or the line agencies, they just reverted to type. It reverted to very tactical skirmishes. Rudd did not himself take enough responsibility, and COAG with him did not take enough responsibility that a leadership group like that should (Interview 8, State central department)

Finally, my interviews suggest officials often become change agents by adopting and applying a different discourse to the one that is dominant in the particular organisation, network, policy field and so on in which they are working. As an example of how change occurs through the adoption of a counter-mode, when the partisan mode is prevailing, one senior state official noted the change when a Commonwealth official introduced the policy-driving perspective:

Look, it's not as though I don't have positions, I don't even have any attitudes on many of these things.' In fact, that was sort of disarming but quite helpful because it meant that we could have a collective conversation which wasn't just rehearsing old positions, fights and battles. It was, 'Let's go on a collective journey together of understanding what could be mutually beneficial. Let's help ourselves out.' (Interview 10, State central department)

6.6 Chapter summary

This chapter has described how the separate bureaucratic domain of intergovernmental management identified in the preceding chapter is shaped by the ideational characteristics of Australian federalism. I noted that there are no unitary cultures, at the federal, jurisdictional or even organizational levels, and particularly no simple, binary 'us and them' oppositions between the Commonwealth and states or central and line departments. Rather, the tensions between these coordinative discourses open up opportunities for officials to exercise agency in delivering change, whether in the form of institutional innovation or with the aim of providing resilience and stability. They may do so in a calculated, strategised way, by building networks and alliances, or by using existing processes to nudge work in a particular direction; or they may do so by seizing an opportunity that has opened up in an unexpected way, most frequently in response to an opening offered by a colleague or colleagues in another jurisdiction.

Officials navigate the multiple discourses of Australian federalism to develop and apply their

strategies, or simply to take advantage of such opportunities as they perceive, through the adoption of ‘practice modes.’ I have described five practice modes that emerged from the interviews. These are not stable, consistent roles that characterise an official’s behavior over long periods and across different situations and problems; rather, distinctive practice modes are highly contextualised, drawing on the federation’s formal and informal structures and processes to produce ideas and values that legitimate and frame their approach. Similarly, each practice mode delivers outcomes in terms of systemic resilience and stability, or in terms of incremental (occasionally significant) change and innovation.

As a pointer to the overall conclusions in the next chapter, there is a clear correspondence between an official’s organisational seniority and/or experience in the intergovernmental field, and their capacity and resources for autonomous strategy formulation and action. But what this chapter has made clear is that officials can base effective strategies on their ideas even where they may lack the positional power of those above them.

This chapter has confirmed the findings discussed in the preceding chapters that discern two rule sets that officials must adopt and adapt: one, derived (at least in the Australian system) from Westminster-type serial loyalty to the political executive, which tends to support systemic stability and process; the other, derived from notions of ‘stewardship’ and therefore closely related to the concept of intergovernmental management as a separate domain, which supports change and innovation. These two rule sets, which help officials navigate the formal and informal structures of the federation outlined in the two preceding chapters, are brought together in the practice modes discussed here.

As a theoretical aside, some of the stability historical institutionalism attributes to path dependence and the lack of exogenous change may, in fact, be due to the work of such order-sustaining change agents. Conversely, what looks like stability or institutional equilibrium may in fact mask incremental innovation (Sheingate 2003).

Finally, in terms of the conceptual underpinnings for my research in the area of federal dynamics, I have confirmed Benz and Broschek’s argument, outlined in the introduction to this chapter, that tensions between the ideational and the social and institutional layers within federal systems are an important source of federal dynamics, but to this I would add that a second source of federal dynamics lies in the way federal structures and ideas combine and interact.

Thus, the data in this chapter introduces the notion of differential rates of change that can apply to the formal and informal institutional layers, and the ideational layer. Change in values and ideas, embedded in the Westminster model of public administration and in ideas of the federal culture, appears to take place slowly, in conformity with Schmidt's view that 'philosophical ideas generally sit in the background as underlying assumptions that are rarely contested except in times of crisis' (Schmidt 2008, p. 306). As she goes on to argue, changes in policy and programmatic ideas are debated more regularly, and here can be associated with informal routines and formal structures.

Table 6: Intergovernmental practice modes: characteristics, sources and effects

	Structural focus	Craft focus	Coordinative discourse focus			Source of individual agency	Impact on federal dynamics	
			Frames/philosophies	Policy paradigms	Policy solutions		Continuity and stability	Change and innovation
Practice mode								
Partisanship	COAG and ministerial councils	Bargaining and negotiating	Federalism as an area for contending and adversarial interests	Winners and losers; a zero-sum game	Pursuit of jurisdictional or organisational interests	Political mandate or sanction from senior officials	Intra-jurisdictional mobilization	Depends on exogenous changes to the council system
Networking	Intra and inter-jurisdictional networks	Establishment and maintenance of networks and relationships	Federalism characterised by multiple, overlapping networks and relationships	Sectoral networks	Mobilisation of network resources	Networks and relationships	Maintenance of cross-jurisdictional trust, use of personal relationships to get things done	Establishment of new networks, policy learning across jurisdictions
Agreement making	Fiscal federalism and intergovt agreements	Fashioning agreements	Federalism as a process for reaching and formalising intergovernmental agreement	Frameworks set by the IGA FFR and general settings for agreements	Congruence with overarching agreement frameworks	Agreement frameworks (especially the IGA FFR)	Guardianship of agreement standards and processes; cross-jurisdictional liaison to effect sound agreement-making; maintenance of fiscal federal processes	Occurs through actions to improve fiscal processes and restore the primacy of normative agreement standards and individual agreement objectives

	Structural focus	Craft focus	Coordinative discourse focus			Source of individual agency	Impact on federal dynamics	
Processing	Senior officials' meetings, working groups	Briefing, communiques, efficiency of outputs	Federalism as a process for the provision of support to the political executive	Public sector bargain: competence and loyalty	Good practice in bureaucratic techniques – 'no surprises' for Ministers or senior officials; 'cognitive' narratives	Formalised policy routines	Effectiveness of the federal system maintained 'behind the scenes' despite differences between political executives; maintenance of support mechanisms for ministerial meetings	Incremental changes to policy and governance processes, policy transfer across jurisdictions
Policy-driving	Public sector organisations	Getting to a policy outcome; mobilisation of organisational and network resources	Federalism as an opportunity to define and achieve the national interest, and/or end outcomes in a policy sector	End goals and objectives for a program or policy	'Crash through' changes to established hierarchies and processes	Personal agency, organisational leadership	Achievement of policy outcomes	Formation of advocacy and instrument coalitions

Chapter 7

‘Fitting New Wheels’: Conclusions and implications

7.1 Introduction

My purpose in focusing on the bureaucracy’s role as a distinct aspect of the federal system is based on the proposition that it makes an important and distinctive contribution to the policy response to Australia’s immediate and long-term challenges. Despite this, we know little about how decisions are made in this context, including how the bureaucracy manages and leverages the balance between the continuity necessary for systemic stability while building a capacity for change. The effectiveness of federal structures and processes depends on the volition and agency of officials working in and on them. Their capacity to find ways past the constraints and to deliver outcomes (and even occasionally to slow a centrally-driven policy momentum), despite the prevailing direction set by political and jurisdictional interests, has important implications for the short and long term future of the federation.

Accordingly, the thesis addressed the following research question: how does the practice of intergovernmental management affect continuity and change in the Australian federal system?

In order to answer this question, my research has covered a range of subsidiary questions that contribute to the sporadic history of research on this issue: what do officials do as intergovernmental managers? Why and how do they do it? Under what conditions? With what results? What changes? And how, of course, how do longer term cycles of stability and change in the federal system affect the practice of intergovernmental management?

7.2 ‘Structures only get you so far’: a summary of the findings

Chapter 4 presented findings on how and when officials exercise agency in the context of the federation’s formal settings: its councils, intergovernmental agreements, and public sector departments and agencies. The chapter described the way individual officials negotiate directions, priorities and strategies amongst and between their individual departmental positions, their jurisdictional positions the national federal policy context and, of course, the political settings for all three.

The chapter contributed a new perspective to the study of intergovernmental management by focusing on what happened when a number of COAG ministerial councils were abolished in 2013. I argued that we can learn a great deal about the role of individual agency in

intergovernmental management by looking at how officials responded to that change and why they did so. In particular, I noted that the networks that developed or continued made a major contribution to systemic change and resilience. The thinking and motivation that goes into such network building suggests that a new set of ideational factors is needed to understand the bureaucracy's role.

Consequently, the chapter demonstrated that officials consciously balance their representation of their ministers' and jurisdictions' specific positions and interests with a depoliticised commitment to making the system work *despite* the politics, as well as in the direction set by their political executives. This perspective, common to all intergovernmental managers, whether in the Commonwealth or states, and whether in central or in line departments, allows them to play an important role in overcoming problems inherent in the federation's formal structures and processes and preventing such problems from arising in the first place. Accordingly, the chapter showed that stability does not mean stasis, nor is agency always subversive; order-preserving innovations are themselves an important source of institutional dynamism and resilience.

Turning to the normative context of intergovernmental agreements and their negotiation, I noted two normative frameworks that govern negotiations: one based on adversarial conflict and distrust, and one that contends that individual state interests as being best served by a collective outcome. Again, I described how officials predicate their work on a balance between these frameworks: for example, as policy brokers who may, in certain conditions, apply problem-solving and mediation strategies in pursuit of national outcomes as distinct from narrower organisational or jurisdictional interests.

Chapter 5 built on the findings in Chapter 4 by pointing to the way officials understand and operationalise intergovernmental management as a distinct form of public administration, in which they prosecute their political executives' policies, or their jurisdictional and even organisational interests while, at the same time, articulating and practising a commitment to the effective and efficient operations of the federal system overall. The chapter found these 'dual hats' at work in a number of settings and processes, including committees and working groups, the processes of agenda setting, drafting communiques, negotiating, briefing and so on.

Chapter 5 adumbrated the conditions that allow officials to depart from the political priorities of the day, and to focus on longer term, systemic policy issues. The concept of

intergovernmental management as a distinct institution with its own rules and organised practices is an important source of legitimisation for moving outside the boundaries of sanctioned policy development. The chapter contributed to a more nuanced understanding of the role officials play in the federation by showing how, subject to structural accountabilities, they exercise agency in constructing or using their bureaucratic space to pursue public value outcomes they perceive as distinct from those of their political executives.

As the chapter showed, the exercise of agency depends to a significant degree on mutual trust and information exchange, keeping channels of communication with one another open, keeping networks and agreement-making processes separate from ongoing policy debates, and by gathering, analysing and reporting on data outside formal channels.

The chapter reinforced my earlier findings about the complex relationship between federal structures and constraints, and the individual agency of the officials who work in and with them. Agency may be inherently conservative, directed at preserving systemic stability, retaining policy momentum, or institutional memory. In such cases, innovation may be directed at preserving a normative *status quo*. At other times, agency is exercised by working against the prevailing directions set by one’s government, jurisdiction or organisation, or to rebuild some part of the system that is not functioning well.

Chapters 4 and 5 identified a close bi-directional interaction between the federation’s formal structures and processes, and the values and ideas that guide officials in their work. Chapter 6 showed how that interaction works in the daily practices adopted by officials. In effect, these are the institutional and ideational layers of federal dynamics at work, and consequently the adoption of different practice modes has varied implications for the exercise of agency in pursuit of systemic, or particular policy change. For example, while the partisan, agreement-making and processing practice modes generally aim for stabilising and improving existing processes and structures, the networking and policy-driving modes tend to work towards innovation and experimentation.

Finally, the chapter explored the implications of multiple discourses for federal dynamics as a structuring framework. The chapter showed that bureaucratic practice in intergovernmental management is far from routine, with the ability to manage conflicting discourses integral to effective intergovernmental management and the role of a change agent.

7.3 Conclusions about the research problem

This research has found that intergovernmental managers make an important contribution both to the stability and resilience of Australia's federal system, and to its capacity for innovation and change. They do so by basing their practice on values, priorities and strategies derived from discursive paradigms about the nature of the federal system, their role as public servants in that system, and ideas about particular policy areas and their histories. They then apply these values and ideas to particular policy issues, and to their work more generally in intergovernmental settings, using and sometimes pushing back against the political and structural constraints they face.

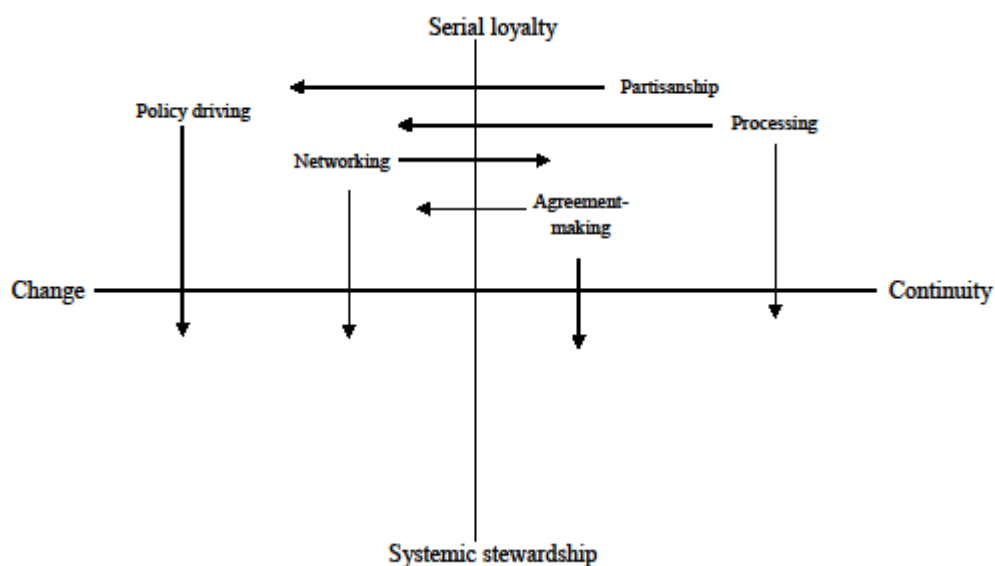
As a distinct contribution to federal dynamics theory generally, and to the study of Australian intergovernmental management in particular, my findings suggest that the links between the institutional and ideational layers of the federation produce two distinct rule sets. These rule sets govern the perceptions and behaviours of bureaucrats in both the formal and informal settings of the federal system, such as ministerial councils and their supporting frameworks and processes on the one hand, and the informal networks and relationships that criss-cross the federal system on the other.

The first rule set reflects the 'serial loyalty' public servants provide to the political executive in the Westminster tradition, along with a commitment to specific jurisdictional and organisational interests. The second rule set recognises and sanctions a role for officials in exercising stewardship over the federal system as a whole, alongside their services to the political executive. This rule set is embodied in a strong sense officials have that intergovernmental management is a separate and distinct policy domain with its own interests and objectives. Along with the continuity/change continuum referred to above, these rule sets form a second axis of normative orientation along which officials position their work.

As summarised by **Figure 4**, officials navigate between and balance these rules sets in responding to the tasks and problems of intergovernmental management. The rules are implemented through the adoption of practice modes that guide officials' understanding of the federal system and their place in it, and, consequently, the priorities, strategies and roles they should adopt. In terms of the research question, these practice modes capture the ways in which officials contribute to systemic continuity and change, and how they do so by harnessing the federal system's structural and informal resources and settings. But as **Figure 4** shows,

practice modes are not fixed or static; officials may shift, for example, from pursuing the finalisation of agreements in pursuit of a government’s agenda, to a more normative stance that reflects the aspirations of the IGA FFR. They may network in order to support a particular policy change, but they may also develop networks as a way of making the system workable. Policy driving may depart from established routines to bring about a specific policy goal, but may also aim at systemic change beyond the interests — and, indeed, the lifetime — of any government. Even partisanship may depart from its characteristic tendency to reinforce traditional roles and postures to pursue significant changes, albeit in the pursuit of the political executive’s wishes rather than moving into stewardship as the other practice modes do.

Figure 4: Practice modes, loyalty/stewardship and continuity/change



My findings challenge conventional thinking about intergovernmental management on a number of fronts. First, I have departed from the tendency in research to infer the interests and motives of the bureaucracy from the constitutional, legal and political structures and processes that constrain it. I have shown that officials play an active role as ‘rule takers’ but also as rule makers, breakers, shapers and keepers.

Such complexity also challenges earlier conclusions about Australian federalism that argue executive federalism and vertical fiscal imbalance close down the options and opportunities for change available to federal reformers.

In relation to public sector organisations and their impact on federal dynamics, I conclude that the traditional perspective on central versus line department roles is still valid. However, I also

show that the demands of complex policy challenges, and the resultant need to apply technical expertise to processes of national harmonisation and coordination, have generated a diversity of views, interests and strategies at play that cautions against simplistic ‘central versus line,’ or ‘states versus Commonwealth’ bifurcations.

My findings suggest that an adversarial view of the federal system simplifies a more complex and varied set of perceptions among officials. As a result, the adversarial view is only one approach officials take to cooperation with other jurisdictions. Similarly, the interview data showed that jurisdictions, including the smaller states and territories, have a wider repertoire of strategies than simply responding to exogenous events, passively accepting whatever the Commonwealth and one of the larger states have cooked up.

7.4 Implications for theory

The findings in this research contribute to a number of directions for the development of federal dynamics theory, particularly as proposed by Benz and Broschek (2013, p. 367).

The normative dimensions of federal dynamics theory, which underpin my research, begin from the proposition that the sustainability of federal systems depends on a capacity to shift with flexibility between continuity and change (Benz & Broschek 2013, p. 382; Clarke 2007, p. 58). While these researchers look to constitutional frameworks to provide this balance, my research has shown that the role played by the bureaucracy also contributes important ‘ballast’ to federalism, with the exercise of agency in bureaucratic practice a key contributing organisational characteristic that supports systemic resilience in the balance between continuity and change. Moreover, to the extent that the bureaucracy contributes to such effectiveness and resilience, it makes an important contribution to the public’s confidence in the system’s legitimacy and capability.

Federal dynamics theory draws on rational choice and historical institutionalist explanations to explain stasis as the outcome of national/sub-national interest equilibria and path dependency respectively. However, while accepting the limitations of my qualitative data, I have shown that continuity and change in federal systems may also be the products of individual agency, confirming an explanatory role for volitional, actor-centred approaches. Consequently, this research demonstrates that an understanding of federal dynamics is deepened by combining historical institutionalist with other approaches. Indeed, Benz and Broschek note that the further development of federal dynamics theory should ‘take into account mechanisms like

discourses’ (2013, p. 386).¹³⁴

A second theoretical point relates to the interaction between federalism’s institutional and ideational layers. The application of a discursive epistemology and methodology to federal dynamics shows how broader societal cultures and ideas affect both intergovernmental relations and their management.¹³⁵ Benz & Broschek see these broader societal ideas about federal systems, or ‘philosophies’ or ‘paradigms’ in discursive institutionalist terms, as generally stable patterns that shape intergovernmental and executive-legislative relations (2013, p. 385). However, the data reported here on the strongly-held idea of the separateness of the bureaucratic domain, and its embodiment in practices of stewardship, suggest that the bureaucratic domain of intergovernmental management exhibits its own differentiated response to these broader cultural and social settings. The involvement of epistemic communities in intergovernmental management, particularly where they include non-government players,¹³⁶ raises another interesting possibility for ideas sourced in broader social and political settings to affect the federal system.

Federal dynamics theory is also concerned with the role of ‘asynchronous’ developments in different institutional layers or arenas (Benz & Broschek 2013, p. 369). This may occur, for example, because relations between governments are generally slower to change than relations between officials, as I have shown when a policy trajectory has rapidly shifted due to a senior official’s intervention. Over time, intergovernmental relations depend on the effectiveness of bureaucratic networks and behind the scenes interaction between officials, so developments in the latter may ultimately deliver broader systemic change. Conversely, as I showed in the analysis of the abolition of ministerial councils and the introduction of minister-led workgroups under Rudd, sudden changes in federal structures and processes can act as critical junctures allowing for new forms of intergovernmental management to develop. Consequently, the interrelationship between intergovernmental relations and management may be an important element in future federal dynamics theorising.

A final theoretical element suggested by this research involves the relationship between

¹³⁴ This view was also expressed in personal correspondence with me by Schmidt, who noted the potential to apply historical institutionalism to change in the institutional layer, while using a discursive approach to look at the ideational and political actor layers where ‘discursive interactions challenge the path-dependency assumptions’ and allow for new policies to incrementally ‘layer’ over the old (correspondence dated 23/2/17)

¹³⁵ For example, Sayers and Banfield note the ‘bi-directional’ interaction between political institutions and ideational forces in Australia (2013, p. 195).

¹³⁶ See the example of CRC Care at Chapter 5.5.2 above

governance and institutional reform. Federal dynamics theory posits a complex relationship between degrees of centralisation and incentives to cooperate, with Australia's extreme vertical fiscal integration and domination by the Commonwealth of the policy agenda likely to both raise the transactional costs of cooperation and the motivation to do so (Benz & Broschek 2013, p. 383). These findings touch on both sides of this equation; leaving aside the obvious impact of political interests, they suggest that the propensity to cooperate is highly differentiated by policy sector and history, the strength of the relevant networks, the views of senior officials and the prevalent ideas in that policy space that may sanction more or less cooperative behaviours. Similarly, practices such as the 'processing' mode I describe specifically aim to reduce the transaction costs of delivering a cooperative outcome.

7.5 Implications for policy

As noted in Chapter 2, 'intergovernmental policy-making capacity' was the key concept linking Canadian federalism, policy-making and public administration for the study conducted by Inwood et al.

Although this dissertation is predicated on a different, if related question, it has nevertheless shown that a focus on how actors, institutions and ideas interact has great relevance for intergovernmental management and its policy functions.

First, differential rates of change in the coordinative discourse between officials may translate to differential rates of change in the federal system's policy outputs. As discussed in Chapter 4, ideas about the federal system overall change slowly, but a much more free-flowing debate about particular policies and programs takes place in intergovernmental forums, energised by boundary-spanning individuals, that informs the work program supporting formal and informal ministerial committees.

Second, the application of a discursive methodology to public policy allows us to consider how changing the discourse — in other words, how a policy problem is described and communicated — may change the way it is prioritised, options developed and designed, how it is negotiated, implemented and evaluated. Changing the discourse, in turn, may depend on harnessing and encouraging changes to the processes and structures in and by which intergovernmental managers operate. As Schmidt argues, 'only by understanding discourse not only as substantive ideas but also as interactive processes can we fully demonstrate its transformational role in policy change' (2011, p. 107).

For example, my findings suggest that a rule set around the concept of ‘stewardship’ exerts a powerful influence on the practice of intergovernmental management. Consciously harnessing that rule set may allow for a different set of dynamics to inform intergovernmental performance management. Instead of producing adversarial and game playing behaviours, alternative approaches to goal setting might reduce the transaction costs of reporting and encourage policy-driving practice.¹³⁷

The importance of, and level of engagement with data gathering, analysis, reporting and dissemination discussed at Chapter 5.3.4 has interesting implications for future policy development and the federal system’s capacity to adapt and respond to new challenges. One such possibility relates to the concept of ‘niches’ as network-based spaces for innovation that are less constrained than formal organisations in their capacity for innovation and experimentation. The policy-driving, networking and even the processing practices I have described would all work well with such structures, albeit requiring varying degrees of legitimisation. Bringing practice modes to bear on fostering, building or maintaining such niches might contribute to a system-wide capacity for innovation, experimentation and learning.¹³⁸

More generally, a systemic approach to such micro-innovation suggests the possibility, if not yet the practice, of an ‘information age’ federalism in which localised initiatives, testing and pilots contribute to a national intergovernmental response to complex policy problems (one of federalism’s potential benefits to which the Twomey and Withers report quoted in Chapter 1 draws attention). The states’ role in service delivery and program administration, through which most of the data for such policy is generated, gives them control over a resource the Commonwealth requires as an input to its own policy capacity, and hence may, at least to some

¹³⁷ See Metzenbaum (2008) for a discussion of goal-setting as an alternative source of intergovernmental incentives in the US. My point here echoes Simeon’s much earlier argument that, despite the costs and constraints of the Canadian federal system, ‘major policy innovation’ was made possible by deep and ongoing networks of communication between officials, based on their long association with one another, and despite the political state of play (2006, p.327).

¹³⁸ Possibilities for federal systems include experimentalist governance (Sabel & Zeitlin 2012), policy learning (Saam & Kerber 2013) and of course the older tradition of laboratory federalism (eg Oates 1999; the concept is critiqued in Tarr 2001, including the likelihood that ‘over the longer term, the tendency would be toward policy uniformity’ as states gravitate towards the most successful model (p. 42). It is interesting to note that the ‘laboratory’ benefits of federalism were discussed by the watershed Royal Commission on Australian Government Administration over 40 years ago: ‘while conflict may be endemic in federal systems, they also offer scope for imaginative administrative arrangements which would not be available in a more centralised, monolithic system and which utilise the resources of the different levels of government in a way which is advantageous to both (cited in Wettenhall 1983, p.166).

extent, balance their fiscal dependence on the Commonwealth.¹³⁹ The governance of such data, including the need to ensure the exposure to risks is managed at both the aggregate national level and de-aggregated state and local levels will present new challenges for intergovernmental management practices (for example, see Leuprecht 2012). Other characteristics of an ‘information age’ federalism that these findings suggest include a role for smaller jurisdictions in generating and facilitating policy transfer, and a role for networks, particularly those that encompass non-government, private and expert collaborators.

7.6 Implications for practice

The pragmatism described in Chapter 2 as a dominant characteristic of Australian federalism, let alone the day to day exigencies of public administration, would appear to leave little room or motivation for broader theoretical reflection by practitioners.¹⁴⁰ Although interviewees welcomed the opportunity the interviews gave them to think about federalism generally, they clearly felt more comfortable discussing specific and detailed policy diagnoses and solutions. Consequently, it would appear that Australian public servants share the tendency Inwood and his co-authors noted in Canada for officials to use, but not reflect on, dominant ideas in political discourse that played a major contextual role for their work (Inwood et al. 2011, p. 418¹⁴¹).

However, even if such pragmatism is, itself, a dominant discourse with an accompanying set of strategic and behavioural implications, it misses what Burgess refers to as the ‘federal spirit’ in action, ‘as a shorthand expression of a set of values and principles that guide action and behaviour among political elites’ (preface to Burgess, 2012). In this formulation, with federalism characterised as a ‘mindset’ (note the link to what Schmidt would call the highest ‘philosophical’ level of discourse, and to the ‘ideas’ that animate discursive institutions), the federal bureaucracy becomes not just a utility for the implementation of decisions but part of the animating spirit of the federation itself, with its own differentiated set of discourses, not least amongst them the sense of ‘stewardship’ I found so dominant.

Accordingly, one of the key findings in this research has been the extent to which officials

¹³⁹ It is only fair to acknowledge that many of my interviewees were sceptical about the possibility of this effect in the absence of any change to the vertical fiscal imbalance in Australia.

¹⁴⁰ When I apologised to a department head for taking up so much of his time with the interview, he responded by showing me detailed notes he had made against each of the questions I had sent him, and graciously thanked me for prompting those reflections on his practice.

¹⁴¹ Indeed, I note their recommendation that the study of intergovernmental policy capacity respond to ‘the push for more reflection’ on the part of its practitioners and analysts (2011, p. 466).

draw on these higher paradigms to inform and legitimise their practice. Bringing their ‘practice modes’ forward for systematic critique and self-examination would help officials think through policy problems and solutions from different perspectives (jurisdictional, policy options, implementation options and interactions between all of these)¹⁴² as well as enhance their capacity to adopt different strategies and approaches to their work as intergovernmental managers.

In guiding and supporting this process, academics and theorists of federalism, public policy and public administration respectively have an opportunity to bring practitioners up to date with more contemporary models, while informing those models with developments from the ‘front line’ as it were (Cairney 2015).

While Inwood and his colleagues found that officials were not focused on reforming existing structures and relations (2011, p. 260), 78 percent of respondents to a survey of Australian officials felt it was very to extremely important to reform the institutions and processes of intergovernmental relations (Bruerton & Kildea 2017, p. 219). My interviewees provided many instances of systemic or micro-reforms they had personally introduced, or at least attempted, including changes to the way lapsing intergovernmental agreements are reviewed, changing the way meetings and working groups operate, changing the structure and role of networks, changing the way negotiations proceed, and so on. Again, bringing practice modes forward for examination in a systematic manner would assist in identifying when and how such change may be introduced, by what means, and what examples of better practice in other jurisdictions are available.

The Australian and other federal systems have seen information, trust and negotiation become salient aspects of the decision-making process in intergovernmental management, in addition to the formal allocation of constitutional and structural responsibilities (see Clarke 2007). The process of bringing practice modes forward for self-conscious reflection, in concert and engagement with other intergovernmental managers, would develop their capacity to manage in that policy environment and give them the opportunity to understand more deeply the perspectives, interests and even the administrative cultures of other jurisdictions.

Finally, my findings had much to say about the relations between central departments, line

¹⁴² For example, Bosomworth argues that finding new approaches to climate change policy requires reflection on, and changes to the dominant interpretations of climate change as a policy problem (2015, p. 1452).

departments and statutory agencies, in delivering programs through the federal system. While Australia only has a small cohort of intergovernmental specialists, it shares with other federations the problem that the importance of the bureaucracy in the federation is not supported by specific training (Poirier & Saunders 2015, p. 463). Accordingly, opportunities for reform in this area suggested by my research begin with the need to foster a better understanding of the respective roles played by departments and agencies within and between jurisdictions, where each ‘side’ is coming from in their interrelationships and intergovernmental processes, and how those processes may be constrained or enhanced by the adoption of particular practice modes.

7.7 Further research

The propositions arising from my findings reflect the broad, exploratory methodology that I adopted in response to the limited research history in this area. However, I noted in Chapter 2 the importance for the analysis of federal dynamics of differentiating between policy types and sectors to understand how policy processes are specifically affected by their federal settings and the significance of variations between them. For example, Australia’s historical focus on driving economic and regulatory policy changes through the federal system may have a particular impact on federal dynamics that could be compared and tested against possibly different impacts in other policy fields. (Inwood et al. found a similar variation between jurisdictions and sectors, noting that the implications of this were poorly understood by academics and practitioners alike [2011, p. 464]).

Prompted by an extant and extensive application of discursive methodologies to environmental policy, my interviews took a vertical slice of environmental regulation, from Commonwealth central and policy departments to state-level regulatory authorities. However, I found it difficult to identify other policy sectors characterised by the same degree of vertical policy integration, which brought Commonwealth central and line department officials together with front line state authority regulators in the same forums and networks.

Consequently, there is still a great deal of information to be gleaned from comparative case studies, within the Australian federation itself, and with other federations, particularly where they display different inter and intra-federal settings.¹⁴³

¹⁴³ I note, in passing, that only two of some four hundred case studies in the Australia and New Zealand School

Other issues for a consideration of their impacts on federal dynamics might include comparing policy areas where smaller or larger jurisdictions have led the work, and a comparison of policy processes carried out by formal or informal structures and processes.¹⁴⁴ A related research question might consider the effect of engagement with other sectors on intergovernmental practice, particularly as cross-sector partnerships and networks become the norm under what is broadly termed ‘the new public governance’ (Osborne 2010). For example, Brown has drawn attention to the divergent trends of increasing centralisation on the one hand, and increasing reliance on decentralised policy and service delivery capabilities on the other (2007, p. 12). How Commonwealth and state government officials navigate between the two trends, and bring local government and other sectors into the intergovernmental management system, will be an increasingly important issue for the system’s effectiveness, and understanding current practices and their implications for the future would be a useful direction for further research to take.

My emphasis on the role of coordinative discourse in Australian federalism prompts questions about whether discourse about the nature of Australian federalism is differentiated across the policy landscape, with varying implications for strategy and practice depending on policy sectors. A considerable amount of research has already been done on the way climate change policies are affected by the three levels of discursive interaction (eg Gillard 2016) and similar analysis might be applied to other policy sectors. Questions might be asked about whether, and to what extent, discursive diversity applies between jurisdictions or within them; between and within different organisations; or whether, in fact, there is a stable normative and cognitive core of discursive resources that informs intergovernmental management wherever it is practised.

The active role officials play in maintaining processes and relationships, despite the politics, confirms broader studies in institutionalism that see institutional resilience as a function of innovation and creative adaptation (Aligica & Tarko 2014). Again, their agency prompts questions about how the labile policy orientations I have described might be harnessed to allow officials to respond with greater flexibility and diversity to policy issues and challenges. A

of Government’s John A Alford Case Study Library (<https://www.anzsog.edu.au/resource-library/case-library/the-case-program>) deal directly with intergovernmental relations (confirmed in personal correspondence with the Director of the Case Study Program, 3/10/2017)

¹⁴⁴ The group of senior officials who meet as the Australian Education Senior Officials Committee is an example of smaller jurisdictions leading change with the support of a highly formalised structure.

particular focus for future research might be on how the settings, operations and rules of intergovernmental management might be developed in ways that make officials at federal and state levels ascribe value to new ways of working together.

My interviewees described the current state of data sharing between jurisdictions, particularly between the Commonwealth and states, as ‘embryonic’, ‘ad hoc’ and even ‘archaic’. Accordingly, an important part of the program I have suggested would include a consideration of the role data plays in generating and facilitating policy development and implementation across the federation and its governance.

Finally, the outcomes from research into the issues and implications I have canvassed in this chapter may support a more systematic approach to training officials in intergovernmental management, rather than leaving it up to individual organisations to provide on-the-job experience and socialization into the role. At the very least, joint engagement by officials from different jurisdictions in formal intergovernmental training exercises would give them an opportunity to see their own and their colleagues’ practice modes in an objective, theoretically-informed context.

7.8 A final note

In the course of researching and writing this dissertation, I have seen the abolition of one major review of the federation, the completion of reviews of the productivity impacts of Commonwealth-state relations (Productivity Commission 2017) and horizontal fiscal equalisation (Productivity Commission 2018), and, more recently, the announcement of ‘a review of federal financial relations from a NSW perspective’ (Perrottet 2019; his review was dismissed, within hours, by both the Prime Minister and the leader of the federal Opposition).

Such reviews may, from time to time, contribute useful analysis; or they may be discarded by the side of the road down which the Australian federation travels, to join the remnants of other such reviews. My aim, as I set it out in Chapter 1, was to understand what goes on beside and beneath this public face of intergovernmental relations, to consider the practice of intergovernmental management and the contribution improving such practices might make to the operations of the federal system overall.

I have confirmed the utility of understanding the complexity and diversity of this practice and its impacts, through the conceptual lens of federal dynamics, particularly in the way the

federation’s institutional and ideational dimensions interact. I have similarly argued that the interaction of the formal and informal aspects of intergovernmental relations and management most affects the capacity of those working in the system and is consequently where improvements to the capacity for intergovernmental management are most likely to be found.

In applying these conceptual frameworks I have found that, despite the constraints of a highly centralised federation, the practice of intergovernmental management offers opportunities for incremental structural change. Intergovernmental managers are not just problem-solving. They are guided by values and purposes that give significance to their activities beyond their immediate utilitarian scope. By building on and deploying existing and strongly held values, norms, cultures and ideas, officials find new ways to balance change and innovation with stability and resilience; in effect, adding new wheels to Deakin’s chariot.

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Appendix 1 Studies of Australian intergovernmental management

Name of study	Summary
Leach (1976)	<p>Leach tests ‘the hypothesis that central to the optimal workability of a federal system is agreement among those who work in it as to what that system entails’. Accordingly, he surveys federal, state and local public servants to understand what they think about federalism in theory, and its impact on administrative practice, particularly comparing how attitudes differ by level of government. The results indicate a high level of dissatisfaction amongst Commonwealth and state public servants on relative roles and responsibilities, while 75 per cent of the Australian respondents feel that arrangements for handling intergovernmental relations are unsatisfactory. He notes that ‘respondents seemed to find it easier to describe the difficulties they felt federalism posed for them on the job than to articulate its advantages’. He reports that Australians tend to favour informal intergovernmental adaptations such as better communication to facilitate intergovernmental planning.</p>
Warhurst (1983)	<p>Warhurst’s first study traces the emergence of intergovernmental specialists in central agencies at the Commonwealth and state levels. He contrasts these ‘gossamer threads’ with the ‘rods of iron’ that had bound officials in ‘functional’ or line departments up to the 1970s. He concludes that segmented policy making via the ‘iron-rods’ of cooperative federalism cannot cope with the increasing number of issues which cut across artificial boundaries.</p>
Warhurst (1987)	<p>Warhurst’s subsequent study continues to review the role of central agencies and the emergence of officials who specialize in the conduct of intergovernmental relations, concerned with ‘the way intergovernmental relations business is conducted, with what is being done across the whole range of government activity, and with how their government ought to do business with other governments’.</p>
Weller (1996)	<p>Weller was commissioned by the Department of the Prime Minister and Cabinet ‘with a view to ‘enhanc[ing] the effectiveness of the analysis, development, implementation and evaluation stages of social and economic policy reforms’ involving Commonwealth and state governments. The review is based on seven case studies of reform and makes recommendations on the role of officials on such matters as</p> <ul style="list-style-type: none"> • formulating COAG’s agenda • negotiation techniques • progress monitoring • championing initiatives.

Name of study	Summary
Painter (2001)	Based on his study of emergent forms of joint decision making under the Special Premiers' Conferences, and then COAG, in the 1990s, Painter concludes 'there is a long-term trend towards the diffusion and institutionalisation of more collaborative forms of coordination in the Australian federation'. His study focuses on the role of officials in supporting such developments, including a 'new breed of policy entrepreneurs who are mobile between jurisdictions, appointed personally and trusted by their ministers, and coordinated in their strategies by increasingly active informal networks and a growing range of protocols and official channels for joint discussion and negotiation'.
Menzies (2012b)	Analyses intergovernmental capacity in the Australian public sector for a 20 year period from Hawke to Rudd, based on interviews conducted with senior Commonwealth and state officials. The article focuses on the Department of the Prime Minister and Cabinet and the skills its officials require in the role, including generalist skills in policy advice and negotiation, and more specific tactical skills in 'bargaining and compromise, political acuity and an understanding of political and policy parameters for decision-making.' The article warns that '[w]ithout any long term capacity PM&C focuses on existing procedures and processes rather than on a strategic agenda. Without the capacity to develop a strategic national agenda, this role is ceded to the states and territories'.
Harwood and Phillimore (2012)	This report examines the effect on Commonwealth and state central agencies of the post-2007 COAG Reform Agenda. Adopting a formal institutional analysis, the report focuses on such matters as the role of central agencies in supporting greater Cabinet scrutiny of federal matters, their role in policy coordination, relations with line departments, legislative harmonization, the impact of personal relationships at the political level on the bureaucracy. The report also notes that it is senior officials who 'often generate much of the forward, blue-sky thinking' at COAG.
Davis and Silver (2015)	Addresses the lack of discussion of the role played by central agency heads and those supporting them who 'play a significant, if undocumented, role in federal reform and intergovernmental relations in Australia'. The review concludes that the National Competition Policy was a success due to 'shared agendas, technical expertise, hardworking officials drawing on substantial evidence and given ministerial authority, public and industry support, sufficient timing, and good political management'. However, the Intergovernmental Agreement on Federal Financial Relations fails due to 'lack [of] a detailed evidence base, sufficiently robust mechanisms to measure outcomes, or an agreed implementation plan with

Name of study	Summary
	clear governance arrangements.’ The review concludes that ‘[t]o succeed, COAG requires a continuous interaction across jurisdictions, an endless conversation to define projects, bring together expertise, and find agreement among first ministers about a reform agenda’.
Smullen (2015; 2017)	<p>The first article challenges one-dimensional assumptions of Commonwealth centralist dominance, through a study of less formal, decentralized processes in mental health policy formation and implementation. The study highlights the role of intergovernmental committees and forums.</p> <p>The second article presents a framework for evaluating and improving the quality of interaction between policy actors for the purpose of ongoing mutual learning, using mental health policy and services as a case study. Smullen finds ‘evidence that a high degree of informal mutuality, consensus and bottom-up shared expertise’ informs the development of mental health objectives, as well as ‘robust discussion between jurisdictional representatives about performance and barriers to improving policy and service delivery.’</p>
Deem, Hollander and Brown (2015): Australian Constitutional Values Survey	This research looks at the way officials think about subsidiarity. It describes how the different ways each level of government approaches subsidiarity, and values around finance, efficiency and uniformity, are likely to colour public servants’ attitudes, leading to difficulties in translating the principle into reform.
Arklay, Bruerton and Hollander (2017): Future of Australia’s Federation Survey: Australian Policymakers and Practitioners	A review of ‘what officials themselves say about collaboration, when and where it works and why it is more or less successful’. Their survey ascertains how extensive the network of interactions between bureaucrats in different jurisdictions is and how positive and productive they find those relationships, although ‘person-to-person relationships are critical to the success or failure of a program’. While overall opinions are positive, federal respondents are more positive about interaction with their state colleagues than state respondents are about interacting with federal officials. The study concludes that the foundations for positive collaboration are mutual understanding and respect, not allowing a partisan environment to derail action, a clear division of responsibilities, particularly in relation to implementation and funding, external motivation such as a disaster or threat and Commonwealth inclusivity.
Bruerton and Kildea (2017): Future of Australia’s Federation Survey: Australian Policymakers and	Analyses what survey respondents thought were the highest priorities for reforming the federal system and what they saw as the major barriers to those reforms succeeding. Respondents place more importance on improving the operation of the existing federal

Name of study	Summary
Practitioners	system than on reshaping the federation through constitutional amendment: reforming financial roles and relationships, the allocation of roles and responsibilities and the institutions and process that support intergovernmental cooperation. Across all jurisdictions, attitudinal barriers stand out, particularly singling out politicians putting their interests above the public interest. The states (particularly state politicians) are identified more often than the Commonwealth as a ‘problem’ group. In summary, ‘officials view the reform process as captive to sectional interests, whether they are those of Commonwealth and state governments, politicians or outside stakeholders, and subject to the will of an apathetic and ill-informed public’.

Appendix 2 Semi structured interview questionnaire

All interviewees were provided with an indicative questionnaire a week or so before the interview, to encourage more detailed consideration of the issues and to give them time to think of examples of successful or unsuccessful strategies and engagements in their personal experience.

Some general questions about what you do in IGM
<p>What work do you do in IGM – what's your role?</p> <p>Is it a sub-set of your usual work, or something distinct?</p> <p>How long have you been in IGM?/in this policy field?</p>
<p>How much time do you spend on IGM? How much time do you spend in direct, face-to-face meetings, as opposed to e-mail communications?</p> <ul style="list-style-type: none"> • Probe for routine management vs core intergovt work.
<p>How do you perform your role, eg how are authority, strategy, implementation, evaluation tasks performed?</p> <ul style="list-style-type: none"> • Difference between negotiation and bargaining?? • How do they report to each other?
<p>How did you get into this role? Do you have a background in IGM in other depts., jurisdictions? Evidence of mobility?</p> <p>Would you consider yourself a specialist in IGM? Or an expert?</p>
<p>What skills are required for your work, and IGM generally? How do you/your colleagues/counterparts get these skills?</p>
<p>Has your IGM role changed in any way and if so, in what way and why? Seen changes? More difficult? What's changed and why?</p>
<p>What triggers the work — Meetings? Workplans? What throws it off-track?</p>
<p>What are the priorities in your particular IGM policy field? Where are 'things' up to?</p>

Some questions about your perception of intergovernmental management practices
<p>What does IGM mean to you? What do you understand by intergovernment relationships?</p> <p>(Not how well it's working – we'll come to that)</p>
<p>Do you think IGM is different in your field of others?</p>
<p>What are the rules of IGM for you?</p> <ul style="list-style-type: none"> • How are they established? Are they always clear, or are there areas of ambiguity or discretion? Eg if I was a new starter, what would you tell me were the 2-3 things I needed to know to guide me in my work?
<ul style="list-style-type: none"> • Do these rules vary according to seniority, role, agency? (eg test for perception that players in other parts of the system have more or less ambiguity or discretion to play with) • What is the interviewee's response to such ambiguity? How do they find a way through such ambiguity and make their own rules, or decide when and how to exercise discretion?
<p>Where do these rules come from? How do you 'learn' them?</p> <p>Imagine I've been newly appointed to work in your agency on IGM – brief me on what I need to know</p>
<p>Whose interests are paramount? For example, are there clear State interests of other States and the CW?</p> <p>Probe for policies and directions at CW and state levels, and how officials learn of and respond to them, eg are there different sets of such rules within a jurisdiction, between them in an IGM forum and across the whole system?</p>
<p>How important are formal regulations and guidelines and do they have any effect on your IGM work?</p>
<p>How important are formal structures and processes like MinCos?</p>
<p>What about resources? What kind of resources matter here and how do they make a difference?</p>
<p>Networks and coalitions:</p> <ul style="list-style-type: none"> • Who do you typically work with and/or report to in IGM? Who forms your authorising environment? Who provides you with support, data? Who do they take

Some questions about your perception of intergovernmental management practices
<p>advice from?</p> <ul style="list-style-type: none"> • Is there a lead agency or individual in this area? How did they get this status, and how is it exercised?
How important is the role of personalities who can foster trust and transcend boundaries
<p>What are the factors inhibiting or enhancing your role in IGM?</p> <ul style="list-style-type: none"> • separate political from administrative factors <p>Test Inwood et al. finding that informal relationships are the most important factor for IPC, followed by pol and admin institutions and actors, and resources in budgets, personnel and time (Inwood et al. 2011, p.417)</p> <p>Importance of resources, eg time to do policy work (Inwood p98)</p>
<p>Overcoming barriers and vetoes:</p> <ul style="list-style-type: none"> • Are there veto actors in your domain? • Who are they? • How does their veto operate – in relation to rules, the implementation of the rules, or both? On what basis, ie what is the basis of their veto right? Is the veto final, or are there areas of sanction less than veto? • What is the interviewee's response to such actors, how do they negotiate change?
<p>Perceptions of other players within jurisdiction or across</p> <p>Line vs central depts.</p> <p>CW vs States</p> <p>Senior vs junior</p>
How relevant is what's going on in other jurisdictions? Do you look at what they're doing and learn from them?
Thinking about the extent you're able to exercise your own initiative or scope in IGM work, can you think of an initiative or program you have worked on where you <u>were</u> able to exercise considerable individual scope?
What about more generally – can you think of examples you've seen of individuals successfully exercising their initiative in IGM?

Some questions about your perception of intergovernmental management practices

Are there examples of intergovernmental policy work or outcomes that they can ascribe to the agency of officials, rather than simply being commissioned by political leaders?

And now thinking of the opposite, can you think of an initiative or program where you would have liked to have had more scope but were constrained?

What factors do you see as significant in either case? What factors lead to a successful process of IGM? What factors undermine it?

What are your perspectives on the current state of intergovernmental relations?

What are your perspectives on the future challenges and directions in inter- governmental management?

What needs to be done to improve IGM? If you could change one thing...

Appendix 3 List of interviewees

Interviewee ID	Jurisdiction	Role (Head/Deputy; other)	Department/agency type (Central; line department; agency)	Primary policy field*
1.	Commonwealth	Other	Central	
2.	Commonwealth	Other	Central	
3.	Victoria	Other	Agency	Environmental regulation
4.	Commonwealth	Other	Line	Social policy
5.	NSW	Other	Line	Social policy
6.	NSW	Other	Central	
7.	NSW	Head/Dep	Line	Environmental policy
8.	NSW	Head/Dep	Central	
9.	NSW	Other	Central	
10.	NSW	Head/Dep	Central	
11.	NSW	Head/Dep	Line	Social policy
12.	Victoria	Head/Dep	Agency	Environmental regulation
13.	Victoria	Other	Agency	Environmental regulation
14.	Victoria	Head/Dep	Agency	Environmental regulation
15.	Victoria	Other	Line	Social policy
16.	Victoria	Other	Line	Social policy
17.	Victoria	Other	Central	

Interviewee ID	Jurisdiction	Role (Head/Deputy; other)	Department/agency type (Central; line department; agency)	Primary policy field*
18.	Victoria	Head/Dep	Central	
19.	Victoria	Head/Dep	Central	
20.	Victoria	Head/Dep	Line	Environmental policy
21.	Commonwealth	Head/Dep	Line	Social policy
22.	Northern Territory	Head/Dep	Central	
23.	NSW	Other	Agency	Environmental policy
24.	Victoria	Other	Line	Social policy
25.	ACT	Other	Central	
26.	Commonwealth	Other	Line	Social policy
27.	Commonwealth	Other	Line	Environmental policy
28.	Northern Territory	Head/Dep	Line	Social policy
29.	Northern Territory	Head/Dep	Line	Social policy
30.	Commonwealth	Head/Dep	Line	Environmental policy
31.	South Australia	Head/Dep	Agency	Social services
32.	South Australia	Other	Agency	Environmental regulation
33.	South Australia	Head/Dep	Agency	Environmental regulation

Interviewee ID	Jurisdiction	Role (Head/Deputy; other)	Department/agency type (Central; line department; agency)	Primary policy field*
34.	South Australia	Other	Line	Social policy
35.	South Australia	Other	Central	
36.	South Australia	Other	Line	Environmental policy
37.	South Australia	Other	Line	Social policy
38.	South Australia	Head/Dep	Central	
39.	Commonwealth	Other	Agency	Environmental regulation
40.	Commonwealth	Other	Line	Social policy
41.	Commonwealth	Head/Dep	Line	Social policy
42.	Commonwealth	Other	Central	
Retired senior officials, interviews 1-4				

* Although some central agency officials specialised in particular policy areas, these have not been separately identified because some individuals could be identified as a result.

Appendix 4 List of coding themes

Main coding group	Key sub-themes	Specific sub-topics
Structures		
	Formal Structures and Procedures	Department-Agency dynamics Jurisdictional issues Ministerial Councils Agreements
	Informal Structures and Procedures	Epistemic communities Networks Other bodies
	Line-Central dynamics	
Craft	Relations with Ministers	
	Interpersonal behaviours	
	Swimming between the flags	Internal processes and procedures
	Policy sanction or constraint on agency	
	IGM Activity	Resourcing IGM work Direction-setting, steering Bargaining and negotiation Communication & discussion Network Mgt & Orgn Data, Information and Reporting Briefing Harmonisation Agreements Mgt Committee work Regulation

Main group	coding	Key sub-themes	Specific sub-topics
			Policy development Policy coordination Governance
		Stance	Example of applied personal agency Example of passive response to structures Examples of how subject feels they made a difference
		IGM Problems	Differences with Ministers Differences between CW and States Differences between States Differences within CW Structure - Ministerial councils Problems with process Problems with agreements Turnover Resourcing
		IGM Solutions	Communication between jurisdictions Intra jurisdiction assistance Negotiation Committee work Political mandate
		IGM - learning the craft	

Main group	coding	Key sub-themes	Specific sub-topics
Values, Cultures & Histories			
		The Federal System as a whole	Rudd reforms Abbott White Paper
		Commonwealth-State relations CW role	
		State cultures and roles	
		Traditions, conventions, rules	
		Interests	
		Trust	
		Career	
Discursive Content			
		Narratives, Stories	Cognitive Normative
		Policy Discourse Levels	Frames, Philosophies, ideologies Problem definitions, program paradigms and frameworks Policy solutions, ideas and concepts
		Clashing discourses	
		Discourse focus	Partisan Agreement-making Networking Processing Policy driving
		Knowledge, data and information	

Main group	coding	Key sub-themes	Specific sub-topics
		Discursive Practices	Learning & Transmitting Routinisation Producing a discourse Disruption, subversion Argumentative interaction
Outcomes			
		New directions	competition and productivity reforms
		Policy transfer and diffusion	
		Modes of change (historical institutionalism)	Conversion Layering Displacement Drift Stasis
Case Study		Environmental regulation	